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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2017–0239; Special Conditions No. 25–690–SC]

Special Conditions: Embraer S.A. Model ERJ 190–300 Airplane; Electronic System Security Protection From Unauthorized Internal Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer S.A. (Embraer) Model ERJ 190–300 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is a digital-systems network architecture requiring isolation or protection from unauthorized internal access. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Embraer on June 14, 2017. We must receive your comments by July 31, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0239 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/*and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Varun Khanna, FAA, Airplane and Flight Crew Interface, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1298; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplane.

In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On September 13, 2013, Embraer applied for an amendment to Type Certificate No. A57NM to include the new Model ERJ 190–300 airplane. The Model ERJ 190–300 airplane, which is a derivative of the Embraer Model ERJ 190–100 STD airplane currently approved under Type Certificate No. A57NM, is a 97- to 114-passenger transport-category airplane, designed with a new wing with a high aspect ratio and raked wingtip, and a new electrical-distribution system. The maximum take-off weight is 124,340 lbs (56,400 kg).

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Embraer must show that the Model ERJ 190–300 airplane meets the applicable provisions of the regulations listed in Type Certificate No. A57NM, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model ERJ 190–300 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual

design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Embraer Model ERJ 190–300 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Features

The Embraer Model ERJ 190–300 airplane will incorporate the following novel or unusual design feature: A digital-systems network architecture requiring isolation or protection from unauthorized internal access.

Discussion

Networks, both in safety-related and non-safety-related applications, have been implemented in existing commercial-production airplanes. However, network security considerations and functions have played a relatively minor role in the certification of such systems because of the isolation, protection mechanisms, and limited connectivity between these networks.

To provide an understanding of the airplane electronic equipment, systems, and assets, these special conditions use the concept of domains. However, this does not prescribe any particular architecture.

The aircraft-control domain consists of the airplane electronic systems, equipment, instruments, networks, servers, software and hardware components, databases, etc., which are part of the type design of the airplane and are installed in the airplane to enable the safe operation of the airplane. These can also be referred to as flight-safety-related systems, and include flight controls, communication, display, monitoring, navigation, and related systems.

The operator-information domain generally consists of functions that the airplane operator manages or controls, such as administrative functions and cabin-support functions.

The passenger-entertainment domain consists of all functions required to provide the passengers with information and entertainment systems.

The Embraer Model ERJ 190–300 airplane design introduces the potential for access to the aircraft-control domain and airline-information-services domain by unauthorized persons through the passenger-information-services domain; and the security vulnerabilities related to the introduction of viruses, worms, user mistakes, and intentional sabotage of airplane networks, systems, and databases.

For electronic systems-and-assets security in these domains, the level of protection provided against security threats should be based on a security-risk assessment, noting that the level of protection could differ between domains and within domains, depending on the security threat. For each security vulnerability and airplane electronic asset, Embraer should identify in which domain the asset will be addressed.

In addition, the operating systems for current airplane systems are usually and historically proprietary. Therefore, they are not as susceptible to corruption from worms, viruses, and other malicious actions as are more-widely used commercial operating systems, such as Microsoft Windows, because access to the design details of these proprietary operating systems is limited to the system developer and airplane integrator. Some systems installed on the Embraer Model ERJ 190–300 airplane will use operating systems that are widely used and commercially available from third-party software suppliers. The security vulnerabilities of these operating systems may be more widely known than are the vulnerabilities of proprietary operating systems that the avionics manufacturers currently use.

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

Applicability

As discussed above, these special conditions are applicable to the Embraer Model ERJ 190–300 airplane. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model of airplane. It is not a rule of general applicability.

The substance of these special conditions has been subject to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Embraer Model ERJ 190–300 airplanes.

1. The applicant must ensure that the airplane design provides isolation from, or airplane electronic-system security protection against, access by unauthorized sources internal to the airplane. The design must prevent inadvertent and malicious changes to, and all adverse impacts upon, airplane equipment, systems, networks, or other assets required for safe flight and operations.

2. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the airplane is maintained, including all post-type-certification modifications that may have an impact on the approved electronic-system security safeguards.

Issued in Renton, Washington, on June 2, 2017.

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–12281 Filed 6–13–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2017–0238; Special Conditions No. 25–689–SC]

Special Conditions: Embraer S.A. ERJ 190–300 Airplane; Electronic-System Security Protection From Unauthorized External Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer S.A. (Embraer) ERJ 190–300 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. These airplanes will have a digital-systems network architecture composed of several connected networks that may allow access to or by external computer systems and networks, and may result in airplane electronic system-security vulnerabilities. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Embraer on June 14, 2017. We must receive your comments by July 31, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0238 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/*and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Varun Khanna, FAA, Airplane and Flight Crew Interface, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1298; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplane.

In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On September 13, 2013, Embraer applied for an amendment to Type Certificate No. A57NM to include the new Model ERJ 190–300 airplane. The Model ERJ 190–300 airplane, which is a derivative of the Embraer Model ERJ 190–100 STD airplane currently approved under Type Certificate No. A57NM, is a 97- to 114-passenger transport-category airplane, designed with a new wing with a high aspect ratio and raked wingtip, and a new electrical-distribution system. The maximum take-off weight is 124,340 lbs (56,400 kg).

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Embraer must show that the Model ERJ 190–300 airplane meets the applicable provisions of the regulations listed in Type Certificate No. A57NM, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model ERJ 190–300 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Embraer Model ERJ 190–300 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Features

The Embraer Model ERJ 190–300 airplane will incorporate the following novel or unusual design feature:

A digital-systems network architecture composed of several connected networks. This network architecture and network configuration will have the capability to allow access

to or by external network sources, and may be used for or interfaced with a diverse set of functions, including:

- Flight-safety-related control, communication, and navigation systems (airplane-control domain);
- Operator business and administrative support (operator-information domain); and
- Passenger information and entertainment systems (passenger-entertainment domain)

Discussion

The Embraer Model ERJ 190–300 airplane's digital-systems network architecture is novel or unusual for commercial transport airplanes as it allows connection to airplane electronic systems and networks, and access from sources external to the airplane (*e.g.,* operator networks, wireless devices, Internet connectivity, service-provider satellite communications, electronic flight bags, etc.) to the previously isolated airplane electronic assets. Airplane electronic assets include electronic equipment and systems, instruments, networks, servers, software and electronic components, field-loadable software and hardware applications, databases, etc. This proposed design may result in network security vulnerabilities from intentional or unintentional corruption of data and systems required for the safety, operation, and maintenance of the airplane.

The existing regulations and guidance material did not anticipate these types of digital-system architectures, nor access to airplane systems. Furthermore, 14 CFR part 25, and current system-safety assessment policy and techniques, do not address potential security vulnerabilities by unauthorized access to airplane data busses and servers. Therefore, these special conditions are issued to ensure that the security, integrity, and availability of airplane systems are not compromised by certain wired or wireless electronic connections between airplane data busses and networks.

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

Applicability

As discussed above, these special conditions are applicable to the Embraer Model ERJ 190–300 airplane. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

This action affects only a certain novel or unusual design feature on one model of airplane. It is not a rule of general applicability.

The substance of these special conditions has been subject to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for electronic system-security protection from unauthorized external access on Embraer S.A. Model ERJ 190–300 airplanes.

1. The applicant must ensure that the airplane electronic systems are protected from access by unauthorized sources external to the airplane, including those possibly caused by maintenance activity.

2. The applicant must ensure that electronic system-security threats are identified and assessed, and that effective electronic system-security protection strategies are implemented to protect the airplane from all adverse impacts on safety, functionality, and continued airworthiness.

3. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the airplane is maintained, including all post-type-certification modifications that may have an impact on the approved electronic system-security safeguards.

Issued in Renton, Washington, on June 2, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–12280 Filed 6–13–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740 and 774

[Docket No. 160217120–7396–02]

RIN 0694–AG85

Wassenaar Arrangement 2015 Plenary Agreements Implementation, Removal of Foreign National Review Requirements, and Information Security Updates; Corrections

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Correcting amendments.

SUMMARY: The Bureau of Industry and Security (BIS) maintains, as part of its Export Administration Regulations (EAR), the Commerce Control List (CCL), which identifies certain items subject to Department of Commerce jurisdiction. This rule corrects citations, replaces text that was inadvertently removed, and corrects other errors associated with the ''Wassenaar Arrangement 2015 Plenary Agreements Implementation, Removal of Foreign National Review Requirements, and Information Security Updates'' final rule published on September 20, 2016 (WA15 rule).

DATES: This rule is effective: June 14, 2017.

FOR FURTHER INFORMATION CONTACT: For general questions contact Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at 202–482 2440 or by email: *Sharron.Cook@bis.doc.gov.*

For technical questions contact: Office of National Security and Technology Transfer Controls, Information Technology Control Division, Aaron Amundson at 202–482–0707.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 2016, BIS published a final rule entitled, ''Wassenaar Arrangement 2015 Plenary Agreements Implementation, Removal of Foreign National Review Requirements, and Information Security Updates'' (81 FR 64656–64692), (WA15

rule). The Wassenaar Arrangement (WA) on Export Controls for Conventional Arms and Dual-Use Goods and Technologies is a group of 41 like-minded states committed to promoting responsibility and transparency in the global arms trade, and preventing destabilizing accumulations of arms. As a Participating State, the United States has committed to controlling for export all items on the WA control lists. The lists were first established in 1996 and have been revised annually thereafter. Proposals for changes to the WA control lists that achieve consensus are approved by Participating States at annual Plenary meetings. Participating States are charged with implementing the agreed list changes as soon as possible after approval. The United States' implementation of WA list changes ensures U.S. companies have a level playing field with their competitors in other WA Participating States. This rule affects three sections of the EAR by correcting citations, replacing text that was inadvertently removed, and correcting other errors associated with the publication of the September 20th WA15 rule.

Part 740—License Exceptions, § 740.13 Technology and Software Unrestricted (TSU)

The introductory paragraph of § 740.13 (License Exception TSU) of the EAR is corrected by removing the reference to ''encryption source code (and corresponding object code) that would be considered publicly available under § 734.3(b)(3) of the EAR,'' because the publicly available provisions for encryption were moved to § 742.15(b) in the WA15 rule. This action also adds to the introductory paragraph a reference to ''release of technology and source code in the United States by U.S. universities to their bona fide and full time regular employees'' as that authorization was added in § 740.13(f) of the EAR by the initial implementation rule (78 FR 22718), April 16, 2013.

Part 740—License Exceptions, § 740.17 Encryption Commodities, Software, and Technology (ENC)

This correcting action makes three changes to § 740.17 of the EAR, as described below.

In § 740.17, a Note that was inadvertently removed by the WA15 rule is added to introductory paragraph (b). The Note was omitted by error when the mass market provisions were moved from § 742.15(b) to § 740.17(b) in order to consolidate these provisions in one place.

Also in § 740.17, paragraph (b)(2)(i) is amended by replacing the incorrect reference to non-existing paragraph (a)(i)(A) and adding in its place the correct reference to paragraph (b)(2)(i)(A).

Supplement No. 3 to Part 774 (Statements of Understanding)

This correction rule amends the Notes to paragraph (a) by revising paragraph (6) to replace the reference to Note 1 to Category 5, Part II with a reference to Supplement No. 2 to part 774 of the EAR because Note 1 to Category 5, Part II was removed by the WA15 rule and replaced with the Supp. No. 2 reference.

Export Administration Act

Although the Export Administration Act of 1979, as amended, expired on August 21, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the Export Administration Regulations (EAR) in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

1. 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 been designated a ''significant regulatory action,'' as defined under Executive Order 12866.

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

3. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a 30-day delay in effective date (5 U.S.C. 553) are inapplicable, because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Immediate implementation of these amendments fulfills the United States' international obligation to the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement contributes to international security and regional stability by promoting greater responsibility in transfers of conventional arms and dual use goods and technologies, thus preventing destabilizing accumulations of such items. The Wassenaar Arrangement consists of 41 member countries that act on a consensus basis, and the changes set forth in this action make technical corrections to regulations implementing agreements reached at the December 2015 plenary session of the Wassenaar Arrangement. Because the United States is a significant exporter of the items covered by this rule, implementation of this rule is necessary for the Wassenaar Arrangement to achieve its purpose. Any delay in implementation will create a disruption in the movement of affected items globally, because of disharmony between export control measures implemented by Wassenaar Arrangement members, resulting in tension between member countries. Export controls work best when all countries implement the same export controls in a timely manner. Delaying this rulemaking to allow for notice and comment and a 30-day delay in effectiveness would prevent the United States from fulfilling its commitment to the Wassenaar Arrangement in a timely manner, and would injure the credibility of the United States in this and other multilateral regimes.

In addition, issuing a notice of proposed rulemaking would be inappropriate and contrary to the public interest in this instance, as this rule is merely making corrections to a previously published final rule.

Although there is no formal comment period, public comments on this final rule are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Ave. NW., Room 2099, Washington, DC 20230.

4. Because this action merely makes technical correcting amendments to the previously published WA15 final rule, the analysis required by the the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that is contained in the WA15 final rule continues to apply to the regulatory text that is corrected by this

action, and no additional analysis is necessary.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 740 and 774 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

PART 740 [AMENDED]

■ 1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 2. Section 740.13 is amended by revising the introductory text to read as follows:

§ 740.13 Technology and Software—unrestricted (TSU).

This license exception authorizes exports and reexports of operation technology and software; sales technology and software; software updates (bug fixes); ''mass market'' software subject to the General Software Note; and release of technology and source code in the United States by U.S. universities to their bona fide and full time regular employees. Note that encryption software subject to the EAR is not subject to the General Software Note (see paragraph (d)(2) of this section).

* * * * *

■ 3. In § 740.17:

■ a. Paragraph (b) introductory text is amended by adding a Note to the paragraph; and

■ b. Paragraph (b)(2)(i) is amended by removing the reference ''paragraph (a)(i)(A)'' and adding in its place ''paragraph (b)(2)(i)(A)''.

The addition reads as follows:

§ 740.17 Encryption commodities, software, and technology (ENC).

* * * * *

(b) * * *

Note to paragraph (b) introductory text: Mass market encryption software that would be considered publicly available under § 734.3(b)(3) of the EAR, and is authorized for export under this paragraph (b), remains subject to the EAR until all applicable classification or self-classification requirements set forth in this section are fulfilled.

* * * * *

PART 774 [AMENDED]

■ 4. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

Supplement No. 3 to Part 774 [Amended]

■ 5. In Supplement No. 3 to part 774, the Notes to paragraph (a) are amended by revising paragraph (6) to read as follows:

Supplement No. 3 to Part 774—Statements of Understanding

(a) * * *

Notes to Paragraph (a): * * *

(6) For commodities and software ''specially designed'' for medical end-use that incorporate an encryption or other ''information security'' item subject to the EAR, see also section 3 (General ''Information Security'' Note (GISN)) to Supplement No. 2 to this part.

* * * * *

Dated: June 7, 2017.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2017–12269 Filed 6–13–17; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2017–0170]

RIN 1625–AA08

Special Local Regulation; Breakers to Bridge Paddle Festival, Lake Superior, Keweenaw Waterway, MI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent special local regulation on Lake Superior within the Keweenaw Waterway for the annual Breakers to Bridge Paddle Festival. This annual event historically occurs within the first 2 weeks of September and lasts for 1 day. This action is necessary to safeguard the participants and spectators on the water in a portion of the Keweenaw Waterway between the North Entry and the Portage Lake Lift Bridge located in Houghton, MI. This regulation will functionally restrict all vessel speeds while within a designated no-wake zone, unless otherwise specifically authorized by the Captain of the Port Duluth (COTP) or a designated representative. The area forming the subject of this permanent special local regulation is described below.

DATES: This rule is effective July 14, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0170 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Lieutenant John Mack, Waterways management, MSU Duluth, Coast Guard; telephone 218–725–3818, email *John.V.Mack@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP Captain of the Port Duluth
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On March 30, 2017 the Coast Guard published an NPRM in the **Federal Register** (82 FR 15662) entitled ''Special Local Regulation; Breakers to Bridge Paddle Festival, Lake Superior, Keweenaw Waterway, MI.'' The NPRM proposed to establish a no-wake zone within the Keweenaw Waterway on an annual basis during the Breakers to Bridge Paddle Festival, and invited comments on our proposed regulatory action related to this fireworks display. The aforementioned NPRM was open for comment for 30 days, in which no comments were received.

III. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published on

March 30, 2017. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule creates a permanent special local regulation in the Keweenaw Waterway for the annual Breakers to Bridge Paddle Festival that historically takes place in the within the first two weeks of September. The no-wake zone will be enforced on all vessels entering a portion of the Keweenaw Waterway beginning at the North Entry at position 47°14′03″ N., 088°37′53″ W.; and ending at the Portage Lake Lift Bridge at position 47°07′25″ N., 088°34′26″ W. All vessels transiting through the no-wake zone will be required to travel at an appropriate rate of speed that does not create a wake except as may be permitted by the Captain of the Port Duluth (COTP) or a designated representative. The precise times and date of enforcement for this special local regulation will be determined annually.

The COTP will use all appropriate means to notify the public when the special local regulation in this rule will be enforced. Such means may include publication in the **Federal Register** a Notice of Enforcement, Broadcast Notice to Mariners, and Local Notice to Mariners. The regulatory text appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it.

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This regulatory action determination is based on the size, location, duration, and time-of-year of the Special Local Regulation. Vessel traffic will be able to safely transit through the no-wake zone which will impact only a portion of the Keweenaw Waterway between the North Entry and the Portage Lake Lift Bridge located in Houghton, MI during a time of year when commercial vessel traffic is normally low. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit through the no-wake zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42

U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a no-wake zone being enforced for no more than 6 hours along a prescribed route between the North Entry & Portage Lake Lift Bridge within the Keweenaw Waterway in Michigan. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.170 to read as follows:

§ 100.170 Special Local Regulation; Breakers to Bridge Paddle Festival, Lake Superior, Keweenaw Waterway, MI.

(a) *Location.* All navigable waters of the Keweenaw Waterway beginning at the North Entry at position 47°14′03″ N., 088°37′53″ W.; and ending at the Portage Lake Lift Bridge at position 47°07′25″ N., 088°34′26″ W.

(b) *Effective period.* This annual event historically occurs within the first or second week of September. The Captain of the Port Duluth (COTP) will announce enforcement dates via Notice of Enforcement, Local Notice to Mariners, Broadcast Notice to Mariners, on-scene designated representatives, or other means of outreach.

(c) *Regulations.* Vessels transiting within the regulated area shall travel at a no-wake speed except as may be permitted by the COTP or a designated on-scene representative. Additionally, vessels shall yield right-of-way for event participants and event safety craft and shall follow directions given by event representatives during the event.

Dated: June 8, 2017.

E.E. Williams,

Commander, U.S. Coast Guard, Captain of the Port Duluth.

[FR Doc. 2017–12284 Filed 6–13–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG–2014–0991]

RIN 1625–AA01

Anchorage Grounds; Lower Mississippi River Below Baton Rouge, LA, Including South and Southwest Passes; New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Interim rule; request for comments.

SUMMARY: The Coast Guard is amending anchorage regulations for the Lower Mississippi River below Baton Rouge. This amendment will modify Cedar Grove Anchorage and White Castle Anchorage, and will establish two new anchorages, Point Michel Anchorage and Plaquemines Point Anchorage, on the Lower Mississippi River, Above Head of Passes. This interim rule increases the available anchorage areas necessary to accommodate vessel traffic; improves navigation safety, providing for the overall safe and efficient flow of vessel traffic and commerce; and aids and assists the economy through increased anchorage capacity, streamlining vessel throughput and increasing ship to port interactions. We invite your comments on this rule.

DATES: This rule is effective on June 14, 2017. Comments and related material must be received by the Coast Guard on or before October 12, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2014–0991 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this interim rule, call or email Lieutenant Commander (LCDR) Howard Vacco, Waterways Management Division, Sector New Orleans, U.S. Coast Guard; telephone (504) 365–2281, email *Howard.K.Vacco@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
LCDR Lieutenant Commander
LNM Local Notices to Mariners
LWRP Low Water Reference Plane
MNSA Maritime Navigation Safety Association
ANPRM Advanced Notice of Proposed Rulemaking
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard establishes anchorage grounds under authority in 33 U.S.C. 471. As stated in title 33 Code of Federal Regulation (CFR) 109.05 (33 CFR 109.05), this authority has been delegated to U.S. Coast Guard District Commanders. On April 3, 2015, the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** (FR) (80 FR 18175) proposing to expand existing and establish new anchorages. An ANPRM is used to test a proposal or solicit ideas, involving interested persons in a potential regulatory action before issuing a formal rulemaking or a Notice of Proposed Rulemaking (NPRM). An agency is not required to publish an ANPRM but may choose to do so.

The Coast Guard is issuing this interim rule without the prior notice and opportunity to comment through the NPRM process, pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment through the NPRM process when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM with respect to this rule because it is impracticable. This rule will reduce vessel traffic congestion, and decrease the distance between anchorages during the most congested and demanding navigation period. This rule will also assist in maintaining safe navigation and movement of commerce during the high water and increased current

conditions present now on the Lower Mississippi River. Delaying implementation of this rule would deny a safer working environment for all mariners utilizing the waterway. Soliciting and responding to comments on an NPRM would delay the margin of safety these new and additional anchorage areas have to offer both the mariners and the port until after the most congested and demanding time of the year—see additional details of hazards and risks in Purpose and Legal Basis section below. This interim rule follows an ANPRM requesting public participation and comments to better assess the need for additional anchorage areas. Comments to the ANPRM included support for additional anchorage areas in general, constructive suggestions, and a request to expand an additional anchorage. Zero comments opposed the new anchorage areas as proposed in the ANPRM. Additionally, the Coast Guard seeks to receive comment while this interim rule is in effect during the most congested and demanding time of the year.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date to provide a full 30 days' notice is impracticable. Immediate implementation is needed to provide a safer working environment for all mariners utilizing this waterway.

III. Purpose and Legal Basis

The Coast Guard received requests from the Crescent River Port Pilots' Association and the New Orleans Baton Rouge River Pilots Association to amend an existing anchorage and establish two new anchorages. These requests were presented and discussed at a Maritime Navigation Safety Association (MNSA) meeting on August 12, 2014 and at a Port Safety Council Meeting on September 10, 2014. Attendees at those meetings did not comment on or object to the requests presented. The Coast Guard received a subsequent request, via a comment to the April 3, 2015 ANPRM, requesting expansion of an additional anchorage. The Coast Guard also observed that during grain season, typically occurring annually from December through May, the anchorages were at maximum capacity. This creates a hazardous condition as vessels experiencing a casualty had no safe anchorage to stop in and the closest safe anchorage for the vessel was further away than was prudent to transit with the casualty. Finally, due to high water conditions on the Lower Mississippi River, the Coast Guard received emergency requests from industry for additional anchorage area as these conditions are causing increased reliance on safe anchorage to manage transits during both high traffic season and high water. This rule will improve the overall safety of anchored vessels in the White Castle and Cedar Grove Anchorages and provide for two additional anchorage areas to address the increased waterway congestion and improve the overall safe and efficient flow of vessel traffic and commerce.

The distance between the two upper anchorages in the Lower Mississippi River, White Castle Anchorage MM 190.4 and Baton Rouge General Anchorage MM 228.5 is so great that a vessel suffering a casualty between them would become a hazard to the waterway. Plaquemines Point Anchorage was created to help mitigate the risk by reducing the distance between safe anchorage for deep draft vessels in the reach between White Castle Anchorage and Baton Rouge General Anchorage. The addition of the Plaquemines Point Anchorage reduces the greatest distance between anchorages at this stretch from 38.1 miles to 24.1miles.

The legal basis and authorities for this rule are found in 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1, Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory anchorages. Through this rulemaking, the Coast Guard is amending two existing anchorage grounds; Cedar Grove Anchorage, 33 CFR 110.195(a)(12) and White Castle Anchorage, § 110.195(a)(29), and is establishing two new permanent anchorage grounds; Point Michel Anchorage, § 110.195(a)(35), and Plaquemines Point Anchorage, § 110.195(a)(36).

The Coast Guard has consulted with the Chief of Engineers the Army Corps of Engineers, New Orleans District about the specific provisions of this interim rule, and the Chief of Engineers has recommended that we proceed with our amendment of two existing anchorage grounds and establishment of two addition anchorage grounds as specified in this rule.

IV. Discussion of Interim Rule

This interim rule establishes two new anchorages and amends two established anchorages to provide necessary additional anchorage area while also requesting comments. While vessels are occupying the new and amended anchorage areas, the impact of this rule will be more apparent to mariners operating in these areas. We believe the mariner will therefore be more inclined to provide input and feedback on how the increased anchorage area is used and if such changes address the needs of the waterway. This feedback will aid the Coast Guard in finalizing these changes and designing better anchorage systems as needed in the future. Additionally, this rule is being timed to take effect during the most demanding maritime environment. During this time the river historically experiences high water levels with faster currents, low river levels with increased shoaling, fog season, and the increased outflow of goods due to grain harvest.

During the ANPRM comment period, the Coast Guard received support for establishing new anchorages and expanding existing anchorages. Four comments were submitted in support of Point Michel Anchorage and Cedar Grove Anchorage. Additionally, one comment requested that the Coast Guard also expand the White Castle Anchorage at Mile Marker 191 Above Head of Passes on the Lower Mississippi River. Therefore, this rule also expands White Castle Anchorage, as requested. It also adjusted the three anchorages discussed in the ANPRM and establishes Plaquemines Point Anchorage. One comment requested that the Coast Guard include latitude and longitude coordinates for the anchorage limits in addition to the textual description. The Coast Guard considered transitioning the anchorage geographic boundaries from Low Water Reference Plane (LWRP) and River Mile Markers (MM) to latitude and longitude coordinates while developing the ANPRM and found it would not add to the mariners' experience or clarity of the anchorage locations. Due to the ever-changing nature of the Lower Mississippi River, using LWRP as a reference for the anchorage boundaries will allow an anchorage to move with the river in the event that it shifts in vicinity of the anchorage. Using latitude and longitude could require the Coast Guard to amend the anchorage definition every time the U.S. Army Corps of Engineers adjusts the LWRP based on hydrographic survey data.

Therefore, through this interim rule with request for comments, the Coast Guard is establishing two new anchorages and increasing the size of two established anchorages. The two new anchorages are known as the Point Michel Anchorage, § 110.195(a)(35), and the Plaquemines Point Anchorage, § 110.195(a)(36). The two anchorages increased in size are the Cedar Grove Anchorage, § 110.195(a)(12), and the

White Castle Anchorage, § 110.195(a)(29).

By increasing existing anchorages and establishing new anchorages, this interim rule increases the available anchorage areas in this section of the river necessary to accommodate vessel traffic; improves navigation safety, providing for the overall safe and efficient flow of vessel traffic and commerce; and aids and assists the economy through increased anchorage capacity, streamlining vessel throughput and increasing ship to port interactions. The additional anchorage area established by this interim rule and request for comments increases the safety of life and property on navigable waters, while ensuring that the needs and concerns of all stakeholders are addressed through the rulemaking comment process before making the new and increased anchorages permanent through a final rulemaking.

A. Point Michel Anchorage

The Coast Guard is establishing Point Michel Anchorage as an area, 1.4-miles long and 500-feet wide along the right descending bank of the river extending from mile 40.8 to mile 42.2 Above Head of Passes. Its inner boundary is a line parallel to the nearest bank 325 feet from the water's edge into the river as measured from the LWRP. Its outer boundary of the anchorage is a line parallel to the nearest bank 825 feet from the water's edge into the river as measured from the LWRP.

B. Cedar Grove Anchorage

Currently the Cedar Grove Anchorage, under § 110.195(a)(12), is an area extending 1.2 miles in length along the right descending bank of the river from mile 69.9 to mile 71.1 Above Head of Passes. The current width of the anchorage is 500 feet, and the inner boundary is a line parallel to the nearest bank 200 feet from the water's edge into the river as measured from the LWRP, with the outer boundary at a line parallel to the nearest bank 700 feet from the water's edge into the river as measured from the LWRP.

The Coast Guard is amending the Cedar Grove Anchorage to increase the anchorage's overall length by fourteen hundredths of a mile, shifting the lower limit down river from mile 69.9 to mile 69.56 and shifting the upper limit down river from mile 71.1 to mile 70.9.

C. White Castle Anchorage

Currently, the White Castle Anchorage, under § 110.195(a)(29), is an area extending 0.7 miles in length along the right descending bank of the river from mile 190.4 to mile 191.1 Above Head of Passes. The current width of the anchorage is 300 feet and its inner boundary is a line parallel to the nearest bank 400 feet from the water's edge into the river as measured from the LWRP, with an outer boundary at a line parallel to the nearest bank 700 feet from the water's edge into the river as measured from the LWRP.

The Coast Guard is amending the White Castle Anchorage to increase the anchorage's overall length by fourteen hundredths of a mile, shifting the lower limit down river from mile 190.4 to mile 190.3 and shifting the upper limit up river from mile 190.1 to mile 191.14.

D. Plaquemines Point Anchorage

The Coast Guard is establishing Plaquemines Point Anchorage as an area, 0.5 miles in length along the right descending bank of the river extending from mile 203.9 to mile 204.4 Above Head of Passes. The anchorage is 500 feet wide and its inner boundary is a line parallel to the nearest bank 400 feet from the water's edge into the river as measured from the LWRP. Its outer boundary is a line parallel to the nearest bank 900 feet from the water's edge into the river as measured from the LWRP.

We have placed illustrations of each of the four anchorages as amended or established by this rule in the docket, accessible as indicated under **ADDRESSES**.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. 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 Executive Order12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

The impacts on routine navigation are expected to be minimal because the anchorage areas are established outside of the navigation channel and will not unnecessarily restrict vessel traffic. When the anchorages are not occupied, vessels will be able to maneuver in and through the anchorage areas, and when occupied there is still room for two-way deep draft traffic to pass.

B. Impact on Small Entities

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

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule is amending two existing anchorage grounds and establishing two new anchorage grounds on a portion of the Lower Mississippi River. The new anchorages are being established and managed like all existing anchorages on the Lower Mississippi River. These anchorages are in the Federal Channel, a safe distance from shore, off revetment, in safe water, do not conflict with any other permit and do not impede safe navigation.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves amending two existing anchorage grounds and establishing two new anchorage grounds on a portion of the Lower Mississippi River. It is categorically excluded from further review under paragraph 34(f) of Figure 2–1 of Commandant Instruction M16475.lD. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this interim rule, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 110.195, revise paragraphs (a)(12) and (29) and add paragraphs (a)(35) and (36) to read as follows:

§ 110.195 Mississippi River below Baton Rouge, LA, including South and Southwest Passes.

(a) * * *

(12) *Cedar Grove Anchorage.* An area, 1.34 miles in length along the right descending bank of the river extending from mile 69.56 to mile 70.9 Above Head of Passes. The width of the anchorage is 500 feet. The inner boundary of the anchorage, mile 69.56 to mile 70.9, is a line parallel to the nearest bank 200 feet from the water's edge into the river as measured from the LWRP. The outer boundary of the anchorage is a line parallel to the nearest bank 700 feet from the water's edge into the river as measured from the LWRP.

* * * * *

(29) *White Castle Anchorage.* An area, 0.84 miles in length, along the right descending bank of the river extending from mile 190.3 to mile 191.14 Above Head of Passes. The width of the anchorage is 300 feet. The inner boundary of the anchorage is a line parallel to the nearest bank 400 feet from the water's edge into the river as measured from the LWRP. The outer boundary of the anchorage is a line parallel to the nearest bank 700 feet from the water's edge into the river as measured from the LWRP.

* * * * *

(35) *Point Michel Anchorage.* An area, 1.4 miles in length, along the right descending bank of the river extending from mile 40.8 to mile 42.2 Above Head of Passes. The width of the anchorage is 500 feet. The inner boundary of the anchorage is a line parallel to the nearest bank 325 feet from the water's edge into the river as measured from the LWRP. The outer boundary of the anchorage is a line parallel to the nearest bank 825 feet from the water's edge into the river as measured from the LWRP.

(36) *Plaquemines Point Anchorage.* An area, 0.5 miles in length, along the right descending bank of the river extending from mile 203.9 to mile 204.4 Above Head of Passes. The width of the anchorage is 500 feet. The inner boundary of the anchorage is a line parallel to the nearest bank 400 feet from the water's edge into the river as measured from the LWRP. The outer boundary of the anchorage is a line parallel to the nearest bank 900 feet from the water's edge into the river as measured from the LWRP.

* * * * *

Dated: June 1, 2017.

D.R. Callahan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 2017–12320 Filed 6–13–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2017–0378]

Safety Zone; Annual Firework Events on the Colorado River, Between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona) Within the San Diego Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the Avi Resort and Casino Labor Day Fireworks on the Colorado River in Laughlin, Nevada on Sunday, September 3, 2017. This safety zone is necessary to provide for the safety of the participants, spectators, official vessels of the event, and general users of the waterway. Our regulation for annual fireworks events on the Colorado River within the San Diego Captain of the Port Zone identifies the regulated area for this event. During the enforcement period, no spectators shall anchor, block, loiter in, or impede the transit of official patrol vessels in the regulated area without the approval of the Captain of the Port, or his designated representative.

DATES: The regulations in 33 CFR 165.1124 will be enforced from 8 p.m. through 10 p.m. on September 3, 2017, for Item 4 in Table 1 ot § 165.1124.

FOR FURTHER INFORMATION CONTACT: If you have questions on this publication, call or email Lieutenant Robert Cole, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619–278–7656, email *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the regulations in 33 CFR 165.1124 for a safety zone on the Colorado River in Laughlin, Nevada for the Avi Resort and Casino Labor Day Fireworks in 33 CFR 165.1124, Table 1, Item 4 of that section from 8 p.m. through 10 p.m. on September 3, 2017. This enforcement action is being taken to provide for the safety of life on navigable waterways during the fireworks event. Our regulation for annual fireworks events on the Colorado River within the San Diego Captain of the Port Zone identifies the regulated area for this event. Under the provisions of 33 CFR 165.1124, a vessel may not enter the regulated area, unless it receives permission from the Captain of the Port, or his designated representative. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter, or impede the transit of participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or Local law enforcement agencies in enforcing this regulation.

This document is issued under authority of 33 CFR 165.1124 and 5 U.S.C. 552 (a). In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and local advertising by the event sponsor.

If the Captain of the Port or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: May 24, 2017.

J.R. Buzzella,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2017–12321 Filed 6–13–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0357]

RIN 1625–AA00

Safety Zone; Potomac River, Newburg, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Potomac River. This action is necessary to provide for the safety of life on the navigable waters during a fireworks display in Charles County near Newburg, MD on June 17, 2017. This action will prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from 8:30 p.m. on June 17, 2017, until 10 p.m. on June 24, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0357 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Mr. Ronald Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On April 11, 2017, Gilligan's Pier of Newburg, MD, notified the Coast Guard that it will conduct a fireworks display starting at 9 p.m. on June 17, 2017. The fireworks display will be launched from a barge located on the Potomac River, in Charles County near Newburg, MD. In the event of inclement weather, the fireworks display will be rescheduled for June 24, 2017. On May 5, 2017 the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zone; Potomac River, Newburg, MD'' (82 FR 21153). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended June 5, 2017, we received no comments.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the potential safety hazards associated with a fireworks display from a barge on navigable waters.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential

hazards associated with the launching of fireworks over navigable waters scheduled for June 17, 2017 will be a safety concern for anyone within 200 yards of the firework barge. The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, the Coast Guard received no comments on its NPRM published May 5, 2017. There are no changes in the regulatory text of this rule from the proposed rule published in the **Federal Register**.

This rule establishes a safety zone from 8:30 p.m. through 10 p.m. on June 17, 2017, and if necessary due to inclement weather, from 8:30 p.m. through 10 p.m. on June 24, 2017. The safety zone will cover the navigable waters of the Potomac River, within 200 yards radius of a fireworks barge in approximate position latitude 38°23′45.2″ N., longitude 076°59′31.8″ W., located near Newburg, MD. The duration of the safety zone is intended to ensure the safety of vessels and the navigable waters before, during, and after the scheduled twenty minute fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. 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 Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Potomac River for 1½ hours during the evening when vessel traffic is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 1–1/2 hours that will prohibit entry within 200 yards of a fireworks discharge barge. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A Record of Environmental Consideration (REC) supporting this

determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0357 to read as follows:

§ 165.T05–0357 Safety Zone; Potomac River, Charles County, MD.

(a) *Definitions.* As used in this section:

Captain of the Port Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing the safety zone described in paragraph (a) of this section.

(b) *Location.* The following area is a safety zone: all waters of the Potomac River, within 200 yards radius of a fireworks barge in approximate position latitude 38°23′45.2″ N., longitude 076°59′31.8″ W., located near Newburg, MD. All coordinates refer to datum NAD 1983.

(c) *Regulations.* The general safety zone regulations found in subpart C of this part apply to the safety zone created by this section.

(1) All persons are required to comply with the general regulations governing safety zones found in § 165.23.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Maryland-National Capital Region. All vessels underway within this safety zone at the time it is implemented are to depart the zone.

(3) Persons desiring to enter or transit through the safety zone must first obtain authorization from the Captain of the Port Maryland-National Capital Region or designated representative. To request permission to enter or transit the area, the Captain of the Port Maryland-National Capital Region or designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Maryland-National Capital Region or designated representative and proceed as directed while within the zone.

(4) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) *Enforcement period.* This section will be enforced from 8:30 p.m. through 10 p.m. on June 17, 2017, and if necessary due to inclement weather, from 8:30 p.m. through 10 p.m. on June 24, 2017.

Dated: June 9, 2017.

L.P. Harrison, Jr.,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2017–12285 Filed 6–13–17; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV105–6043; FRL–9961–19–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the West Virginia state implementation plan (SIP). The regulations affected by this update have been previously submitted by the West Virginia Department of Environmental Protection (WV DEP) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

DATES: This action is effective June 14, 2017.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Sheila K. Martinez, (215) 814–2035 or by email at *martinez.sheila@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The SIP is a living document which a state revises as necessary to address its unique air pollution problems. Therefore, EPA, from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997 **Federal Register** document. On February 10, 2005 (70 FR 7024), EPA published a **Federal Register** document beginning the new IBR procedure for West Virginia. On February 28, 2007 (72 FR 8903), February 10, 2009 (74 FR 6542), December 28, 2010 (75 FR 81474) and July 25, 2013 (78 FR 44884), EPA published updates to the IBR material for West Virginia.

Since the publication of the last IBR update, EPA has approved into the SIP the following regulatory changes to the following West Virginia regulations:

A. Added Regulations

1. EPA-Approved Regulations and Statutes 6B–1–3 (West Virginia Code 6B-Ethics Standards and Financial Disclosure), sections 6B–1–3, 6B–2–6 and 6B–2–7.

B. Revised Regulations

1. 45 CSR 8 (Ambient Air Quality Standards), sections 45–8–1 through 45–8–4.
2. 45 CSR 13 (Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation), section 45–13–1 through 45–13B.
3. 45 CSR 14 (Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration), section 45–14–1 through 45–14–26.
4. 45 CSR 19 (Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution which Cause or Contribute to Nonattainment), section 45–19–1 through 45–19B.

C. Removed Regulations

1. 45 CSR 8, sections 45–8–5 through 45–8–7.

II. EPA Action

In this action, EPA is announcing the update to the IBR material as of July 1, 2016 and revising the text within 40 CFR 52.2520(b).

EPA is revising our 40 CFR part 52 ''Identification of Plan'' for the State of West Virginia regarding incorporation by reference, § 52.2520(b). EPA is revising § 52.2520(b)(1) to clarify that all SIP revisions listed in paragraphs (c) and (d), regardless of inclusion in the most recent ''update to the SIP compilation,'' are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking in which EPA approved the SIP revision, consistent with following our ''Approval and Promulgations of Air Quality Implementation Plans; Revised Format of 40 CFR part 52 for Materials Being Incorporated by Reference,'' effective May 22, 1997 (62 FR 27968). EPA is revising § 52.2520(b)(2) to clarify references to other portions of paragraph (b) with paragraph (b)(2). EPA is revising paragraph (b)(3) to update address and contact information.

EPA is also revising entries at 40 CFR 52.2520(c) in the ''State Citation'' column for Regulation 45 CSR 8 (Ambient Air Quality Standards) to read ''Section 45–8–1,'' ''Section 45–8–2,'' ''Section 45–8–3,'' and ''Section 45–8–4.''

III. Good Cause Exemption

EPA has determined that this rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This rule simply codifies provisions which are already in effect as a matter of law in federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of previously EPA approved regulations promulgated by the State of West Virginia and federally effective prior to July 1, 2016. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[1] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region III Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

V. Statutory and Executive Order Reviews

A. General Requirements

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

[1] 62 FR 27968 (May 22, 1997).

report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the West Virginia SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this ''Identification of plan'' update action for West Virginia.

List of Subjects in 40 CFR Part 52

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

Dated: March 21, 2017.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart XX—West Virginia

■ 2. Section 52.2520 is amended by:
■ a. Revising paragraph (b); and
■ b. In paragraph (c), in the table titled ''EPA-Approved Regulations in the West Virginia SIP'':
■ i. Revising the entries under ''[45 CSR] Series 8 Ambient Air Quality Standards''; and
■ ii. Removing the entries for sections 45–19–6, 45–19–10, 45–19–11, 45–19–20, 45–19–21, and 45–19–22 under ''[45 CSR] Series 19 Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution which Cause or Contribute to Nonattainment''.

The revisions reads as follows:

§ 52.2520 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to July 1, 2016, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Entries in paragraphs (c) and (d) of this section with the EPA approval dates after July 1, 2016 for the State of West Virginia have been approved by EPA for inclusion in the State implementation plan and for incorporation by reference into the plan as it is contained in this section, and will be considered by the Director of the Federal Register for approval in the next update to the SIP compilation.

(2) EPA Region III certifies that the materials provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the state implementation plan as of the dates referenced in paragraph (b)(1) of this section. No additional revisions were made to paragraph (d) of this section between April 1, 2013 and July 1, 2016.

(3) Copies of the materials incorporated by reference into the state implementation plan may be inspected at the Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. To obtain the material, please call the Regional Office at (215) 814–3376. You may also inspect the material with an EPA approval date prior to July 1, 2016 for the State of West Virginia at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(c) * * *

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

State citation [chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
*	*	*	*	*
[45 CSR] Series 8 Ambient Air Quality Standards				
Section 45–8–1	General	6/1/14	9/22/14, 79 FR 56514	Filing and effective dates are revised.
Section 45–8–2	Definitions	6/1/14	9/22/14, 79 FR 56514.	
Section 45–8–3	Adoption of Standards	6/1/14	9/22/14, 79 FR 56514	Effective date is revised.
Section 45–8–4	Inconsistency Between Rules	6/1/14	9/22/14, 79 FR 56514.	
*	*	*	*	*

* * * * *

[FR Doc. 2017–12236 Filed 6–13–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2015–0142; FRL–9958–61–Region 6]

Approval and Promulgation of Implementation Plans; Oklahoma; Infrastructure and Interstate Transport for the 2012 Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving elements of a State Implementation Plan (SIP) submission from the State of Oklahoma for the 2012 Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS or standard). The submission addresses how the existing SIP provides for implementation, maintenance, and enforcement of this NAAQS (infrastructure SIP or i-SIP). The i-SIP ensures that the Oklahoma SIP is adequate to meet the State's responsibilities under the CAA.

DATES: This rule is effective on July 14, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2015–0142. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Wendy Jacques, 214–665–7395, *jacques.wendy@epa.gov.*

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

I. Background

The background for this action is discussed in detail in our November 21, 2016 proposal (81 FR 83184). In that proposed rule, we proposed to partially approve and partially disapprove the June 16, 2016, infrastructure SIP submission from Oklahoma, which addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2012 $PM_{2.5}$ NAAQS. We also proposed to disapprove a portion of the January 28, 2015 i-SIP submission for the 2010 SO_2 NAAQS. We proposed disapproval for both submissions only as to the portions that address CAA section 110(a)(2)(D)(i)(II); the requirement for visibility protection in other States. CAA section 110(a)(2)(D)(i)(II) requires the SIP for a new or revised NAAQS to contain adequate provisions to prohibit emissions which will interfere with required measures for any other State for (1) prevention of significant deterioration (PSD) of air quality or (2) visibility protection. We did not receive any comments regarding our proposal.

At this time, we are not acting on the portions of the 2012 $PM_{2.5}$ and 2010 SO_2 NAAQS i-SIP submissions that address CAA section 110(a)(2)(D)(i)(II) as it relates to visibility protection in other States. We also note that the State did not address CAA section 110(a)(2)(D)(i)(I)[1] in the June 16, 2016 submittal for the 2012 $PM_{2.5}$ NAAQS, thus we are not taking action to approve or disapprove the requirements for that section. The State submitted an i-SIP revision to address the requirements in CAA section 110(a)(2)(D)(i)(I) for the 2012 $PM_{2.5}$ NAAQS on December 19, 2016; we expect to act on that submittal at a later time.

II. Final Action

We are approving the portions of the June 16, 2016 Oklahoma infrastructure SIP submission for the 2012 $PM_{2.5}$ NAAQS that address CAA sections 110(a)(2)(A), (B), (C), (D)(i)(II) as it relates to the prevention of interference with PSD, (D)(ii), (E)(i), (E)(ii), (F), (G), (H), (J), (K), (L) and (M). The i-SIP addresses how the existing SIP provides for implementation, maintenance, and enforcement of the 2012 $PM_{2.5}$ NAAQS and is adequate to meet the State's responsibilities under the CAA.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this 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);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

[1] CAA section 110(a)(2)(D)(i)(I) requires the SIP to contain adequate provisions to prohibit emissions to other States which will (1) contribute significantly to nonattainment of a new or revised NAAQS or (2) interfere with maintenance of that NAAQS.

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 August 14, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Interstate transport of pollution, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 1, 2017.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart LL—Oklahoma

■ 2. In § 52.1920(e), the first table titled ''EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Oklahoma SIP'' is amended by adding an entry for ''Infrastructure for the 2012 $PM_{2.5}$ NAAQS'' at the end to read as follows:

§ 52.1920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE OKLAHOMA SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
Infrastructure for the 2012 $PM_{2.5}$ NAAQS.	Statewide	6/16/2016	6/14/2017 [Insert FR page number where document begins].	Does not address 110(a)(2)(D)(i)(I). No action on 110(a)(2)(D) (i)(II) (visibility portion).

* * * * *

[FR Doc. 2017–12209 Filed 6–13–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2015–0833; FRL–9962–48-Region 6]

Approval and Promulgation of Implementation Plans; Texas; Clean Air Act Requirements for Vehicle Inspection and Maintenance and Nonattainment New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Texas for the 2008 8-hour ozone national ambient air quality standards (NAAQS). The SIP revision being approved pertains to CAA 2008 ozone NAAQS requirements for vehicle inspection and maintenance (I/M) and nonattainment new source review (NNSR) in the Dallas/Fort Worth ozone nonattainment area (DFW area).

DATES: This rule is effective on September 12, 2017 without further notice, unless the EPA receives relevant adverse comment by July 14, 2017. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2015–0833, at *http://www.regulations.gov* or via email to *young.carl@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 Carl Young, 214–665–6645, *young.carl@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Carl Young, 214–665–6645, *young.carl@epa.gov.* To inspect the hard copy materials, please schedule an

appointment with Mr. Young or Mr. Bill Deese at 214–665–7253.

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

I. 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). The 2008 8-hour ozone NAAQS replaced the 1997 8-hour ozone NAAQS of 0.08 ppm. The DFW area was classified as a ''Moderate'' ozone nonattainment area for the 2008 8-hour ozone NAAQS and initially given an attainment date of no later than December 31, 2018 (77 FR 30088 and 77 FR 30160, May 21, 2012). The DFW area consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant 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 Moderate ozone nonattainment areas, including the DFW area as July 20, 2018 (80 FR 12264, March 6, 2015).

On July 10, 2015, Texas submitted a SIP revision for the DFW area based on an attainment date of December 31, 2018. Texas further revised the SIP to address an attainment date of July 20, 2018 and submitted it on August 5, 2016. Copies of the SIP revisions are available at *www.regulations.gov,* Docket number EPA–R06–OAR–2015–0833.

As a moderate ozone nonattainment area and under the anti-backsliding requirements of the previous standards, Texas is required to implement I/M and NNSR programs. These were also requirements under the previous ozone standards. In the August 5, 2016 SIP revision Texas discusses these requirements and noted: (1) That the DFW area meets the CAA requirements to implement an I/M program and (2) since the Dallas/Fort Worth 1997 ozone nonattainment area was not redesignated to attainment prior to the revocation of the 1979 1-hour ozone NAAQS and the 1997 ozone NAAQS, anti-backsliding NNSR requirements for Serious areas still apply. Texas also noted that a redesignation substitute demonstration was submitted for the 1997 ozone NAAQS to satisfy anti-backsliding requirements for the revoked NAAQS in the DFW area. Anti-backsliding requirements ensure air quality in nonattainment areas does not get worse after an air quality standard is revoked (81 FR 81276, 81288, November 17, 2016). The EPA approved Texas SIP (Texas SIP) that incorporates by reference the state's regulations can be found at 40 CFR 52.2270(c).

II. EPA's Evaluation

A. CAA Requirements for I/M in the DFW Area

I/M refers to the inspection and maintenance programs for in-use vehicles required under the CAA. The applicable requirements for ozone nonattainment areas that are required to adopt I/M programs are described in CAA sections 182(a)(2)(B), 182(b)(4), 182(c)(3), and 184(b)(1)(A) and further defined in 40 CFR 51.350 (''Applicability'') of the I/M rule (40 CFR part 51, subpart S). Under these cumulative requirements, Moderate ozone nonattainment areas in urbanized areas with 1990 Census populations of 200,000 or more are required to adopt basic I/M programs, while Serious and higher classified ozone nonattainment areas outside of the northeast Ozone Transport Region with 1980 Census-defined urbanized populations of 200,000 or more are required to adopt enhanced I/M programs (40 CFR 51.350(a)(2) and (4)).

Previously, we revoked (1) the 1979 1-hour ozone NAAQS (69 FR 23951, April 30, 2004 and 70 FR 44470, August 3, 2005) and (2) the 1997 8-hour ozone NAAQS (80 FR 12264, March 6, 2015). Because the DFW area was classified as Serious nonattainment for these revoked ozone NAAQS, an enhanced I/M program is required in the DFW area for anti-backsliding purposes (40 CFR 51.1100(o)). Ozone classifications can be found in CAA section 181 and 40 CFR 51.1103. The Serious classification is one classification higher than the Moderate classification.

The Texas SIP includes 30 TAC Section 114.2 (Inspection and Maintenance Definitions) and 30 TAC Section 114.50 (Vehicle Emissions Inspection Requirements) except for 30 TAC Section 114.50(b)(2). In a 2001 final rule, we did not approve 30 TAC Section 114.50(b)(2) as part of the Texas SIP as (1) it placed an additional reporting burden upon commanders at Federal facilities regarding affected Federal vehicles that is not imposed upon any other affected non-federal vehicle and (2) additional reporting requirement is not an essential element for an approvable I/M program, since affected Federal vehicles are also subject to the same reporting requirements as other affected non-federal vehicles (66 FR 57261, 57262, November 14, 2001).

Under these provisions Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall and Tarrant counties are included in an enhanced I/M program. An enhanced program is required for anti-backsliding purposes since these counties were classified as Serious nonattainment for the 1997 8-hour ozone NAAQS (75 FR 79302, December 20, 2010). The program requires that gasoline powered light-duty vehicles, and light and heavy-duty trucks between two and twenty-four years old, that are registered or required to be registered in the I/M program area, including fleets, are subject to annual inspection and testing. Wise County is not required to be included in the I/M program as it is not included in the urbanized area. *See www2.census.gov/geo/pdfs/reference/ua/1990uas.pdf* and *www.census.gov/population/metro/files/lists/historical/90mfips.txt.* Therefore, since the provisions in the Texas SIP already include the CAA I/M requirements for the DFW area, we are approving this portion of the SIP revisions.

B. CAA Requirements for NNSR in the DFW Area

The applicable NNSR requirements for the various ozone nonattainment classifications are described in CAA section 182 and further defined in 40 CFR part 51, subpart I (Review of New Sources and Modifications). Under these requirements new major sources or major modifications at existing sources in an ozone nonattainment area must comply with the lowest achievable emission rate and obtain sufficient emission offsets. The emission offset ratio required for Moderate ozone nonattainment areas is 1.15 to 1 (CAA section 182(b)(5)).

The Texas SIP includes 30 TAC Section 116.12 (Nonattainment and Prevention of Significant Deterioration Review Definitions) and 30 TAC Section 116.150 (New Major Source or Major Modification in Ozone Nonattainment Area). These provisions require new major sources or major modifications at existing sources in the DFW area to comply with the lowest achievable emission rate and obtain emission offsets at the Moderate classification ratio of 1.15 to 1. Therefore, since the provisions in the Texas SIP already include the CAA NNSR requirements

for ozone nonattainment areas classified as Moderate, we are approving this portion of the SIP revision.

We note that at the time of the SIP revisions, except for Wise County, the Serious area NNSR permitting requirements for the 1997 8-hour ozone NAAQS applied for the DFW area to meet anti-backsliding requirements. Moderate area NNSR permitting requirements applied to Wise County. In November 2016, we approved a redesignation substitute for the DFW area, which addressed both the 1-hour and 1997 ozone standards. This action found that the area was meeting these standards and was expected to continue to meet these standards. Based on this finding, EPA, as part of the redesignation substitute, removed the Serious area NNSR requirement so that only Moderate area NNSR requirements apply to the DFW area (81 FR 78688, November 8, 2016).

III. Final Action

We are approving revisions to the Texas SIP submitted on August 5, 2016, that pertain to 2008 ozone NAAQS requirements for vehicle I/M and NNSR for the DFW area. As discussed above, the Texas SIP includes provisions to implement these Moderate area ozone nonattainment requirements.

The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on September 12, 2017 without further notice unless we receive relevant adverse comment by July 14, 2017. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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).)

Samuel Coleman was designated the Acting Regional Administrator on June 1, 2017 through the order of succession outlined in Regional Order R6–1110.13, a copy of which is included in the docket for this action.

List of Subjects in 40 CFR Part 52

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

Dated: June 1, 2017.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. In § 52.2270(e), the second table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas is amended by adding an entry at the end for ''Vehicle Inspection and Maintenance and Nonattainment New Source Review Requirements for the 2008 Ozone NAAQS'' to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP

Name of SIP provision	Applicable geographic or non-attainment area	State approval/ submittal date	EPA approval date	Comments
* *	* *	*	* *	*
Vehicle Inspection and Maintenance and Nonattainment New Source Review Requirements for the 2008 Ozone NAAQS.	Dallas-Fort Worth, TX	7/6/2016	6/14/2017, [Insert **Federal Register** citation].	

[FR Doc. 2017–12210 Filed 6–13–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0621; FRL–9962–57–Region 9]

Revisions to the California State Implementation Plan; Imperial County Air Pollution Control District; Stationary Sources Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing action on revisions to the Imperial County Air Pollution Control District (ICAPCD or District) portion of the California State Implementation Plan (SIP). We are finalizing full approval of two rules. Both rules update and revise the District's New Source Review (NSR) permitting program for new and modified sources of air pollution. We are also finalizing a technical correction to a previous action that will remove one rule from the SIP.

DATES: This rule will be effective on July 14, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA–R09–OAR–2015–0621. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although it may be 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 *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Thien Khoi Nguyen, EPA Region IX, (415) 947–4120, *nguyen.thien@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to EPA.

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The word or initials *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials *CARB* mean or refer to the California Air Resources Board.

(iii) The initials *CFR* mean or refer to Code of Federal Regulations.

(iv) The initials or words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(v) The word or initials *ICAPCD* or *District* mean or refer to the Imperial County Air Pollution Control District, the agency with jurisdiction over stationary sources within Imperial County.

(vi) The initials *NSR* mean or refer to New Source Review.

(vii) The initials *SIP* mean or refer to State Implementation Plan.

I. Proposed Action

On December 19, 2016, the EPA proposed a full approval of two rules and a limited approval and limited disapproval (LA/LD) of one rule (as noted in Table 1) submitted by CARB for incorporation into the ICAPCD portion of the California SIP. 81 FR 91895. Table 1 also lists the dates the rules were adopted by ICAPCD and submitted by CARB, which is the governor's designee for California SIP submittals.

Table 1—Submitted NSR Rules

Rule #	Rule title	Adopted/ revised	Submitted	Proposed action
204	Applications	9/14/99	05/26/00	Full Approval.
206	Processing of Applications	10/22/13	02/10/14	Full Approval.
207	New and Modified Stationary Source Review	10/22/13	1/21/14	LA/LD.

The EPA proposed to approve Rules 204 and 206 as part of ICAPCD's NSR permitting program because we determined that these rules meet the statutory requirements for SIP revisions as specified in sections 110(l) and 193 of the CAA. Rules 204 and 206, together with Rule 207, satisfy the substantive statutory and regulatory requirements for a NSR permit program as contained in CAA section 110(a)(2)(c) and 40 CFR 51.160–51.164. We also proposed a limited approval and limited disapproval of Rule 207. We do not intend to finalize that proposed action. Instead, we intend to take a new rulemaking action to conditionally approve Rule 207 into the Imperial County portion of the California SIP. We also proposed to remove Rule 103 (Exemptions) as a technical correction to a previous action approving Rule 202 (Exemptions) into the ICAPCD portion of the California SIP, which superseded and replaced Rule 103. 76 FR 26615 (May 9, 2011).

II. EPA Action

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments. Therefore, as authorized by CAA section 110(k)(3) and 301(a), the EPA is finalizing approval of Rule 204 (Applications) and Rule 206 (Processing of Applications) into the ICAPCD portion of the California SIP. This action will incorporate the submitted rules into the SIP.

In this action we are also finalizing a technical correction to our previous action approving Rule 202 into the ICAPCD portion of the California SIP.[1] In that action, our approval of Rule 202 into the SIP superseded and replaced Rule 103, which EPA had previously approved on May 31, 1972 (37 FR 10832), but we failed to include the necessary regulatory text to effect this change. This final action includes the necessary regulatory text to remove Rule 103 from the California SIP. We did not seek public comment on this technical correction because public participation requirements were satisfied as part of our action approving Rule 202 into the SIP.

In the proposed action, we also proposed a limited approval and limited disapproval of Rule 207 (New and Modified Stationary Source Review). We do not intend to finalize that proposed action. Instead, we intend to take a new rulemaking action to conditionally approve Rule 207 into the Imperial County portion of the California SIP.

[1] 76 FR 26615 (May 9, 2011).

III. Incorporation by Reference

In this rule, 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 ICAPCD rules listed in Table 1 of this document. The EPA has made, and will continue to make, these rules generally available electronically through *www.regulations.gov* and in hard copy at the U.S. Environmental Protection Agency, Region IX (Air –3), 75 Hawthorne Street, San Francisco, CA 94105–3901.

IV. 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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. 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 beyond those imposed by state law.

D. 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. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. 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.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks 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 impose additional requirements beyond those imposed by state law.

H. 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.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

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 August 14, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, New source review, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 19, 2017.

Alexis Strauss,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (b)(14)(ii), (c)(279)(i)(A)(*15*) and (*16*), and (c)(442)(i)(A)(*4*) to read as follows:

§ 52.220 Identification of plan-in part.

* * * * *

(b) * * *

(14) * * *

(ii) Previously approved on May 31, 1972 in paragraph (b)(14) of this section and now deleted with replacement in paragraph (c)(351)(i)(A)(*4*) of this section, Rule 103.

* * * * *

(c) * * *

(279) * * *

(i) * * *

(A) * * *

(*15*) Rule 204, ''Applications,'' revised on September 14, 1999.

(*16*) Previously approved on January 3, 2007 in paragraph (c)(279)(i)(A)(*14*) of this section and now deleted with replacement in paragraph (c)(442)(i)(A)(*4*) of this section, Rule 206.

* * * * *

(442) * * *

(i) * * *

(A) * * *

(*4*) Rule 206, ''Processing of Applications,'' revised on October 22, 2013.

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[FR Doc. 2017–12235 Filed 6–13–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2014–0237; FRL–9962–75-Region 6]

Approval and Promulgation of Implementation Plans; New Mexico; Regional Haze Progress Report State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving a revision to a State Implementation Plan (SIP) submitted by the State of New Mexico on March 14, 2014. New Mexico's SIP revision addresses requirements of the Act and the EPA's rules that require New Mexico to submit a periodic report assessing progress toward the reasonable progress goals (RPGs) for mandatory Class I Federal areas in and outside New Mexico with a determination of the adequacy of the State's existing regional haze SIP.

DATES: This rule is effective on July 14, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2014–0237. All documents in the docket are listed at the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Grady, (214) 665–6745; *grady.james@epa.gov.*

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

I. Background

The background for this action is discussed in detail in the EPA's November 3, 2015 proposal.[1] In that document, the EPA proposed to approve New Mexico's regional haze progress report SIP revision (submitted on March 14, 2014) as meeting the applicable regional haze requirements set forth in 40 CFR 51.309(d)(10). In addition, the EPA proposed to approve New Mexico's determination that the current regional haze SIP is adequate to meet the State's RPGs for the first planning period and requires no further substantive revision to achieve established goals for visibility improvement and emission reductions.

The proposal and the accompanying technical support document (TSD) provide detailed descriptions of New Mexico's SIP revision and the rationale for the EPA's proposed approval of the State's submittal. Please see the docket for these and other documents regarding the proposal.

The public comment period for the proposal closed on December 3, 2015. The EPA received one set of comments in a letter dated December 3, 2015, from the National Parks Conservation Association and the San Juan Citizens Alliance regarding the EPA's proposal. The comment letter is included in the publicly posted docket associated with this action at *http://www.regulations.gov.* Below, the EPA provides a summary of the comments received and corresponding responses. After careful consideration of the comments and the information provided, the EPA is approving the progress report, as proposed.

II. Response to Comments

Comment: The commenter noted that New Mexico's progress report indicated that the State is no longer implementing its State Mobile Source Regulation but is relying on federal programs that will achieve the same reductions. The commenter argued that the progress report does not meet 40 CFR 51.309(d)(10)(i)(A) because it was not clear about the start date of the State's

[1] See 80 FR 67682.

reliance on federal programs for mobile source reduction or the impact that a delayed start had on visibility.

Response: The comment does not demonstrate a failure to meet § 51.309(d)(10)(i)(A). This element requires a description of the status of implementation of all control measures included in the regional haze SIP for achieving RPGs for Class I areas both within and outside the State. As discussed in the proposal, New Mexico stated in the progress report that it is implementing all long-term control strategies with the exception of the formerly adopted, and now repealed, State Mobile Source Regulation. The State Mobile Source Regulation, when adopted in 2007, would have applied the California motor vehicle standards within New Mexico. We do not agree that the provided details for § 51.309(d)(10)(i)(A) are lacking or inadequate. Section 51.309(d)(10)(i)(A) requires only a description of the status of the implementation of the measures in the regional haze SIP, not an assessment of the effect of the implementation or failure to implement each specific measure. New Mexico's reliance on the federal program is unlikely to have a significant impact on visibility. At the time the regulation was adopted by New Mexico, the California standards were projected to substantially differ from federal motor vehicle emissions standards. Since that time, as the progress report notes, the California and federal programs for emissions standards for motor vehicles are more aligned with each other than was expected by New Mexico when it adopted the State Mobile Source Regulation.[2]

Comment: The progress report does not meet 40 CFR 51.309(d)(10)(i)(A) because it was not clear whether certain Western Regional Air Partnership (WRAP) policies, including the *WRAP Policy on Enhanced Smoke Management Programs for Visibility* and the *WRAP Policy on Annual Emissions Goals for Fire,* were incorporated into the State's Smoke Management Plan (SMP) and are being implemented.

Response: Consistent with the recommendation of the Grand Canyon Visibility Transport Commission, the regional haze program under 40 CFR part 309 brings special attentiveness to smoke management. New Mexico adopted a revision to the New Mexico Administrative Code (NMAC) addressing smoke management to meet these regional haze rule requirements. The EPA previously approved New Mexico's regional haze SIP in 2012 as meeting the requirements of 40 CFR 51.309(d)(6), which deals with implementation plan requirements related to fire.[3] In doing so, the EPA noted that the SMP operating within New Mexico was consistent with the *WRAP Policy on Enhanced Smoke Management Programs for Visibility* and the *Wrap Policy on Annual Emissions Goals for Fire,* both of which were appendices to the approved Regional Haze SIP.[4] The progress report stated that New Mexico, aside from its update regarding State Mobile Source Regulation, is implementing the long-term strategies adopted into the regional haze SIP. This sufficiently indicates the status of implementation for the State's SMP. Therefore, we disagree that the progress report's discussion of the State's SMP failed to meet the requirements of 40 CFR 51.309(d)(1)(i)(A).

Comment: The progress report does not meet 40 CFR 51.309(d)(10)(i)(B) because it did not include any information about emission reductions provided by the State's SMP. Annual emissions related to fire and estimated benefits should be readily available.

Response: We do not agree with the assertion that the progress report fails to meet the requirements of 40 CFR 51.309(d)(10)(i)(B). While this provision requires a summary of the emission reductions achieved in the State through the implementation of the measures in its regional haze SIP, nothing in this provision requires the State to include estimates in its progress report of the emission reductions achieved by specific measures. Namely, there is no requirement for a detailed, causal analysis that pinpoints or links certain emission reductions to actual regional haze SIP measures. It is acceptable for the State to provide a summary of overall emission changes, rather than an analysis that attributes particular emission reductions from specific sources to certain measures in the plan, mainly when such a higher level summary does not indicate any problem with the direction and magnitude of these overall changes. We address in the response to a later comment the adequacy of the State's summary of overall emissions.

Additionally, the comment misperceives the basis for inclusion of the SMP in the SIP. The visibility goal announced in section 169A of the CAA is both to prevent future impairment as well as remedy existing impairment. Regional haze SIPs accordingly may include programs to avert increases in emissions. The SMP is generally designed to limit increases in emissions, rather than to reduce existing emissions. As such, there would be little purpose for the State to try to estimate the specific emission reductions achieved through implementation of the program.[5]

Comment: The progress report does not meet 40 CFR 51.309(d)(10)(i)(B) because there were no estimates of reductions by the new source review (NSR) and prevention of significant deterioration (PSD) programs. The progress report did not indicate what emissions were avoided or allowed by the implementation of these programs.

Response: As explained above, nothing in 40 CFR 51.309(d)(10)(i)(B) requires the State to include estimates in its progress report of the emission reductions achieved by specific measures included in the regional haze SIP.

Additionally, although the regional haze SIP also cited the PSD and NSR programs, the primary benefit from these programs is to limit emission increases rather than precisely working to achieve reductions in existing emissions. Given this, there would be little purpose for New Mexico to try to estimate the specific emission reductions achieved through the implementation of these programs.

Comment: The progress report does not meet 40 CFR 51.309(d)(10)(i)(B) because point source data for sources reporting to the Clean Air Markets Database should be included.

Response: This comment does not identify a basis to disapprove the SIP revision. Source-specific information on all electric generating units (the sources reporting to the Clean Air Markets Database) is not required in summarizing the emission reductions in the progress report. The submitted progress report provided detailed information on anticipated emission reductions at the San Juan Generating Station (SJGS). This facility is the largest point source in the State and the most significant New Mexico emission source in the Clean Air Markets Database. More

[2] For example, in 2009, the EPA and the National Highway Traffic Safety Administration (NHTSA) proposed ''regulatory convergence'' with California on motor vehicle fuel economy standards. See 74 FR 49454 (September 28, 2009). This was subsequently adopted, starting with model years 2012–2016. 75 FR 25323 (May 7, 2010).

[3] See 77 FR 70693 (November 27,2012) (approving 20.2.65 NMAC (Smoke Management)).

[4] See 77 FR 36065.

[5] Consistent with these points, as reported on New Mexico's Smoke Management Program Web site, a fire emissions summary for 2005–2016 shows no appreciable increases in SMP-regulated emissions. See New Mexico 2017 Annual Smoke Management Meeting Presentation, available at *https://www.env.nm.gov/wp-content/uploads/2017/01/2016_Fire_Emissions.pdf.*

importantly, it is the only electric generating unit with definite emission limits in the New Mexico regional haze SIP. The progress report provided statewide point source emission data from 2008–2012 and compared it to the 2018 projected emission levels.[6] While additional information from the Clean Air Markets Database regarding emissions from other electric generating units may be useful, it is not essential for the approval of the submitted progress report. As noted in the proposal, we compared the point source data in the progress report to that reported by the Clean Air Markets Database and found that the reported emissions were consistent with that data.

Comment: The progress report does not meet 40 CFR 51.309(d)(10)(i)(B) because the inventories did not address all haze-related pollutants. Emission inventories specific to particulate organic matter, coarse mass, ammonia (NH_3), and volatile organic compounds (VOCs) should be included.

Response: 40 CFR 51.309(d)(10)(i)(B) requires a summary of the emission reductions achieved throughout the State through implementation of the control measures mentioned in 40 CFR 51.309(d)(10)(i)(A). Because this provision does not call for a summary of all pollutants that could contribute to visibility impairment, we do not agree that the progress report is inadequate. The initial regional haze SIP focused on reducing emissions of sulfur dioxide (SO_2), nitrogen oxides (NO_X), and particulate matter (PM) emissions, and New Mexico's progress report summarized the changes in emissions in these pollutants from 2008–2012. Even if no information on other pollutants was included in the progress report, we would consider it reasonable and sufficient if New Mexico's progress report only provided a summary of emission reductions for these pollutants.

New Mexico's progress report, however, also provided information on other visibility-impairing pollutants. Section 3.5 of the progress report discussed New Mexico's baseline emissions inventory for 2002 and an estimated emissions inventory for 2008. The 2002 inventory was developed by the WRAP for use in the initial WRAP regional haze SIP strategy development. The 2008 inventory was based on WRAP inventory work for the West-wide Jumpstart Air Quality Modeling Study (WestJumpAQMS) and the Deterministic & Empirical Assessment of Smoke's Contribution to Ozone (DEASCO3) modeling project efforts. The pollutants inventoried were SO_2, NO_X, NH_3, VOCs, primary organic aerosol (POA), elemental carbon (EC), fine soil, and coarse mass. The inventories were categorized for all major visibility-impairing pollutants under major source groupings either as anthropogenic or natural. The anthropogenic source categorization included point and area sources, on and off-road mobile sources, area oil and gas, fugitive and road dust, and anthropogenic fire. The natural source categorization included natural fire, wind-blown dust, and biogenic sources.

Comment: The progress report presented information on visibility levels within section 3.3 of the progress report, which is titled as addressing the requirement of 40 CFR 51.309(d)(10)(i)(B). The commenter does not consider this presentation as satisfying the requirement of 40 CFR 51.309(d)(10)(i)(B) concerning emissions because the progress report failed to explain how much of the monitored improvements in visibility impairment were the result of emission reductions from control measures in the New Mexico SIP or from factors outside of the SIP. Furthermore, the trends outlined in section 3.5 were seven years out of date.

Response: We agree with the commenter that information on visibility levels is not an adequate substitute for the summary of emissions that is specifically required by § 51.309(d)(10)(i)(B). However, we are not basing our approval of the progress report as meeting the requirements of 40 CFR 51.309(d)(10)(i)(B) on the information on visibility levels presented in section 3.3 of the progress report. The summary of emissions requirement is satisfied for the reasons explained in our earlier responses.

Comment: The goal of the progress report is to document progress and changes over the past five years and to make informed decisions on that basis. To meet the requirements of 40 CFR 51.309(d)(10)(i)(C), the progress report should include information that describes the preceding five-year period as closely as possible. The progress report discussed the 2005–2009 period. Although information from 2007–2011 was included, the EPA should require the use of the most recent data available.

Response: Although New Mexico used 2005–2009 data to estimate current conditions, it also included additional IMPROVE data in its progress report. The 2007–2011 visibility information was specifically included in Tables 3.3–3.18 of the progress report. We do not agree that the information was not addressed such that the requirements of the section were not met. Because the progress report was not submitted until March 14, 2014, however, there was an understandable lag between its drafting, its adoption, and submission. We do not consider the non-inclusion of visibility data more recent than 2011 to be a basis for disapproval. Visibility data for all Class I areas through 2013 were available to the public as of the date of the commenter's letter via the IMPROVE program's Web site, and the commenter did not argue that the more recent data supports disapproval of the progress report.

Comment: The progress report does not meet 40 CFR 51.309(d)(10)(i)(D) because it did not use the most up-to-date emissions information nor provide sufficient forward projections.

Response: Section 3.8 of the progress report contains a detailed analysis of 2008 emissions from all source types. In addition, Figure 3.6 of the SIP revision presents SO_2 and NO_X point source emission data for 2008–2012. The year 2012 was the most recent emission information covering all types of point sources available at the time of the progress report's development. The progress report does not include any emissions information for non-point sources for any year more recent than 2008. However, we note that the 2011 National Emissions Inventory (NEI) Version 1.01 was published by the EPA in July 2013,[7] only about 8 months before the State submitted the progress report. In light of this, we consider the progress report to adequately meet the requirement of 40 CFR 51.309(d)(10)(i)(D), which calls for an analysis tracking the changes ''over the past 5 years'' in emissions from ''all sources'' based on ''the most recent updated emissions inventory.''

Regarding the issue of projected inventories, § 51.309(d)(10)(i)(D) states that emission estimates must be projected forward as necessary and appropriate to account for emissions changes during ''the applicable 5-year period.'' This phrase is meant to refer to ''the past 5 years,'' a phrase that itself is not clearly defined in the rule. The progress report was required to be submitted in 2013 and was submitted in February 2014. Thus, a projection for point sources would at most have included estimates for 2013. In light of this, we do not believe that a projection

[6] See Figure 3.6 of Progress Report for the State Implementation Plan for Regional Haze, March 11, 2014.

[7] Profile of the 2011 National Air Emissions Inventory, April 2014, *https://www.epa.gov/sites/production/files/2015-08/documents/lite_finalversion_ver10.pdf.*

for point sources beyond 2012 is necessary. With regard to non-point sources, a projection could have addressed projected-emissions several years beyond the 2008 information presented in the progress report; however, the SIP focuses primarily on the control of point source emissions. With respect to changes in fire-related emissions, projections would inherently be highly uncertain in any case. Consequently, we do not believe that projections of non-point source emissions beyond 2008 were needed in the progress report.

Comment: The progress report does not meet 40 CFR 51.309(d)(10)(i)(E) because it drew an unsupported conclusion that no anthropogenic emissions within New Mexico limited or impeded progress in reducing pollutant emissions or improving visibility. For example, White Mountain had visibility degradation.

Response: We disagree with the comment. 40 CFR 51.309(d)(10)(i)(E) requires an assessment of any significant changes in anthropogenic emissions within or outside the State that have occurred over the past five years that have limited or impeded progress in reducing pollutant emissions and improving visibility in Class I areas impacted by the State's sources. In its progress report, New Mexico concluded that no such changes had occurred. The proposal noted that there have been significant reductions in emissions of SO_2 and NO_X from point sources within the State. Also, the State has relied on the history of visibility levels at affected Class I areas to assess whether there have been changes in emissions that limit or impede progress. While we do not consider information on visibility levels to be a substitute for the required summary of emissions that is exactly required by § 51.309(d)(10)(i)(B), we consider this approach to be an acceptable method for making the assessment of whether there have been changes in emissions that limit or impede progress. Overall visibility at each of the seven Class I areas in New Mexico had improved since the baseline period, with the exception of visibility at the White Mountain Wilderness Area for the most recent period. Specifically, for White Mountain, the five-year average deciview trend for the 2007–2011 period showed slightly worse visibility (0.2 dv higher) for the 20% worst days, as compared to average conditions for 2000–2004. The commenter relied on this degradation in visibility at White Mountain to support its argument that anthropogenic emissions within New Mexico have limited progress in improving visibility. The slight visibility degradation at White Mountain, however, was the result of elevated coarse mass levels from non-anthropogenic sources in 2011 compared to baseline levels.[8] Overall SO_2 and NO_X emissions in New Mexico have actually been going down, or are at least stable. The proposal also indicated that White Mountain showed a 0.3 dv improvement in visibility on the 20% best days.[9]

Comment: The progress report does not meet 40 CFR 51.309(d)(10)(i)(E) because it failed to address anthropogenic emissions outside of New Mexico that may have limited or impeded progress in visibility improvement.

Response: The progress report is required to assess significant changes outside the State that have limited or impeded progress, as specified by § 51.309(d)(10)(i)(E). As in the case of assessing in-state emissions, we believe it was acceptable for the State to use trends in visibility levels to make this assessment. Visibility conditions at the Class I areas are improving, as discussed in response to the comment above, and there do not appear to be significant changes that would call for explicit discussion. We also note that the State's Regional Haze SIP and its participation in the section 309 program addressed anthropogenic emissions from outside of the borders that limit or impede visibility improvement.

Comment: The progress report does not meet 40 CFR 51.309(d)(10)(i)(F) because it cited 2000–2010 visibility monitoring data to conclude that New Mexico's approach was sufficient to meet the RPGs. The progress report offers little support to show that visibility is causally linked to New Mexico's SIP measures rather than to changes in natural or out-of-state sources. The EPA should require quantitative evidence to show the link between visibility benefits and the SIP measures.

Response: We view the requirement of this section as a qualitative assessment that should evaluate emissions and visibility trends, including expected emission reductions from measures that have not yet become effective. Even though section 3.7 of the progress report (titled as addressing the requirement of 40 CFR 51.309(d)(10)(i)(F)) cited visibility monitoring data from 2000–2010, visibility data through 2011 is presented in other sections of the progress report. In particular, tables 3.3–3.18 presented visibility values of the 20% worst and 20% best days of periods 2000–2004, 2005–2009, 2006–2010, and 2001–2011 for each affected Class I area. Table 2.1 of the progress report showed the RPGs for each area.

The five-year average deciview values for the most recent period 2007–2011 indicated visibility improvement for all Class I areas (relative to 2000–2004 baseline period) except White Mountain, which was slightly worse by 0.2 dv. It is important to note that White Mountain visibility improved in the 2005–2009 and 2006–2010 periods compared to the baseline period 2000–2004. The data supports the conclusion that the 2007–2011 visibility conditions at White Mountain were higher than the 2000–2004 baseline due to elevated coarse mass levels in 2011 from high wind events.

The 2007–2011 visibility conditions at Bandelier and San Pedro parks were higher than in the intermediate periods, due to elevated particulate organic matter levels in 2011 from impacts of fires, but better than in 2000–2004.

For all the areas, the 2007–2011 visibility levels were better than the RPGs for the 20% best days. This is also true for five of the areas for the 20% worst days. The commenter did not suggest any particular reasons to expect that visibility will degrade in these areas for the best/worst days where it is already better than the 2018 RPGs.

As noted, three Class I sites were not yet meeting the 2018 RPGs for the 20% worst days in 2007–2011. The progress report explains that in this period White Mountain was adversely affected by coarse mass from high wind events, and San Pedro and Bandelier were affected by particulate organic matter from natural and anthropogenic fires. In 2005–2009, these three areas were below or very close to the 2018 RPGs.

In summary, we conclude that the State's visibility assessment is adequate. Wildfires or dust storms might again affect visibility in the 2018 timeframe, but New Mexico expects further reduction of SO_2 and NO_2 emissions, principally from the implementation of Best Available Retrofit Technology (BART) controls. These control measures should contribute toward improved visibility conditions at all New Mexico Class I areas, including Bandelier, San Pedro, and White Mountain for 2018. Further progress will also occur through recently adopted or proposed regulatory programs. The State was reasonable to rest on these positive overall visibility trends and future expectations regarding emission reductions in determining that the existing SIP requires no further revision

[8] See 80 FR 67688.

[9] The SIP includes this information in Table 3.17 and Table 3.18.

to achieve established RPGs. New Mexico demonstrated progress toward meeting the RPGs and no substantive revisions to the Regional Haze SIP are necessary for the first planning period. We also note that § 51.309(d)(10)(i)(F) does not impose a requirement for a demonstration of a causal linkage between improvements in visibility and measures in New Mexico's SIP.

Comment: The progress report does not meet 40 CFR 51.309(d)(10)(i)(F) because it did not offer sufficient evaluation of the lack-of-progress or backsliding at Class I areas, like White Mountain, that indicated degradation in the 2007–2011 time-period relative to 2005–2009 values. A more detailed account of visibility issues at these Class I areas should be required before concluding that the existing SIP is adequate.

Response: We disagree with this comment. Based on the speciation information in Tables 3.3–3.18, the data supports the conclusion that dust storms and/or wildfires are responsible for the limited cases of degradation in visibility between 2005–2009 and 2007–2011, rather than any backsliding on the control of emissions from anthropogenic sources.

Comment: According to 40 CFR 51.308(d)(1)(B)(vi), RPGs should reflect all reductions in the SIP and in any other CAA requirement. RPGs for Class I areas impacted by SJGS should be lower. The EPA should require the progress report to include a list of Class I areas impacted by future reductions from SJGS and clarify that RPGs are those that would be consistent with that source's reductions.

Response: The progress report was prepared with emphasis on New Mexico's improvement in meeting established RPGs for 2018. There were no changes to the State's RPGs in the progress report nor were there any submitted for review as any separate SIP revision. Whether the RPGs should be lower is not in the scope of the proposed action. We agree that future reductions at SJGS will improve visibility at Class I areas inside and outside of New Mexico. Having already approved the RPGs,[10] we noted that with the additional future two-unit shut down and two-unit selective non-catalytic reduction (SNCR) installation at the SJGS, New Mexico emissions will improve on the RPGs in its SIP. New Mexico is not impeding other states in meeting analogous RPGs, and the additional BART controls will decrease visibility-impairing pollutants more than anticipated from the RPGs based on the WRAP modeling for NO_X, SO_2 and PM.

New Mexico does not have a progress report requirement to list all Class I areas impacted by future reductions from the SJGS. However, state and federal technical records for the BART determination at SJGS provide information on this area of interest.

Comment: The commenter requested that the EPA require revisions to the progress report to ensure Class I areas in New Mexico and surrounding states are on the glide path to achieve natural visibility conditions by 2064.

Response: In the progress report SIP, New Mexico was required to assess whether the SIP was sufficient to meet the RPGs that were established for the first ten-year planning period. There is no requirement for a state to include an assessment of whether a SIP is sufficient to ensure that Class I areas (in the State or those in nearby states) are on track to meet the uniform rate of progress (URP).[11] The State followed the proper approach in setting the RPGs through 2018 by considering the URP and the factors established in section 169A of the CAA and in the EPA's Regional Haze Rule at 40 CFR 51.308(d)(1)(i)(A). In doing so, the RPGs reflected a slower rate of progress than the URP for the first planning period. Those established RPGs for each Class I area in New Mexico were approved by the EPA in a previous action.[12] Looking forward, New Mexico will be required to provide new updated RPGs for 2028 in the next comprehensive regional haze SIP revision planning period.

III. Final Action

The EPA is approving New Mexico's regional haze progress report SIP revision (submitted on March 11, 2014) as meeting the applicable regional haze requirements set forth in 40 CFR 51.309(d)(10).[13] The EPA is also approving New Mexico's determination that the current regional haze SIP requires no further substantive revision at this time in order to achieve established RPGs for 2018 for visibility improvement and emission reductions.

40 CFR 51.309(d)(10)(i)(A) requires a description of the status of implementation of all control measures included in the regional haze SIP for achieving RPGs for Class I areas both within and outside the State. New Mexico adequately addressed the status of control measures in the progress report regional haze SIP as required by the provisions under 40 CFR 51.309(d)(10)(i)(A). All major control measures (including BART) were identified and the emission reduction strategy behind each control was explained. New Mexico included a summary of the implementation status associated with each control measure and quantified the benefits where possible. In addition, the progress report SIP adequately outlined the compliance time-frame for all controls.

40 CFR 51.309(d)(10)(i)(B) requires a summary of the emission reductions achieved throughout the State through implementation of control measures mentioned in 40 CFR 51.309(d)(10)(i)(A). The progress report must identify and estimate emission reductions to date in visibility-impairing pollutants from the SIP control measures identified for implementation. New Mexico has adequately summarized the emission reductions achieved throughout the State in the progress report regional haze SIP as required under 40 CFR 51.309(d)(10)(i)(B).

40 CFR 51.309(d)(10)(i)(C) requires that for each mandatory Class I Federal area within the State, the State must assess visibility conditions and changes, with values for most impaired and least impaired days expressed in terms of five-year averages of these annual values. New Mexico has adequately addressed the requirements under 40 CFR 51.309(d)(10)(i)(C) to include summaries of monitored visibility data as required by the Regional Haze Rule.[14]

40 CFR 51.309(d)(10)(i)(D) requires an analysis tracking the change over the

[10] The RPGs can be seen in the June 2012 proposed action (77 FR 36044) which was finalized on November 27, 2012 (77 FR 70693).

[11] The URP is the minimum rate of progress needed to achieve the CAA goal of natural visibility conditions within sixty years (to 2064). It represents the slope between baseline visibility conditions in 2004 and natural visibility conditions in 2064. The URP for each ten-year long-term strategy equals the visibility improvement along the glide path for that planning period.

[12] The RPGs can be seen in the June 2012 proposed action (77 FR 36044) which was finalized on November 27, 2012 (77 FR 70693).

[13] The final action does not pertain to the Albuquerque/Bernalillo County portion of the SIP in New Mexico. The New Mexico Air Quality Control Act (section 74–2–4) authorizes Albuquerque/Bernalillo County to locally administer and enforce the State Air Quality Control Act by providing for a local air quality control program, and that entity submitted an initial regional haze SIP for that jurisdiction that was separately approved by the EPA (77 FR 71119, November 29, 2012). The EPA anticipates a separate regional haze progress report SIP submittal from this entity.

[14] For purposes of improved clarity on future reports, we recommend that New Mexico include a graph of rolling averages similar to what was provided in the guidance example, illustrating the uniform glide path. The glide path graphically shows what would be a uniform rate of progress, toward meeting the national goal of a return to natural visibility conditions by 2064 for each Class I area.

past five years in emissions of pollutants contributing to visibility impairment from all sources and activities within the State. The analysis must be based on the most recent updated emissions inventory, with estimates projected forward as necessary and appropriate, to account for emissions changes during the applicable five-year period. New Mexico has adequately addressed the requirements under 40 CFR 51.309(d)(10)(i)(D) to track changes in emissions of pollutants contributing to visibility impairment from all sources and activities within the State. The analysis in the progress report was based on appropriate data.

40 CFR 51.309(d)(10)(i)(E) requires an assessment of any significant changes in anthropogenic emissions within or outside the State that have occurred over the past five years that have limited or impeded progress in reducing pollutant emissions and improving visibility in Class I areas impacted by the State's sources. New Mexico has adequately addressed the requirements under 40 CFR 51.309(d)(10)(i)(E) to show that the major contributors of anthropogenic emissions are being reduced and visibility is improving without having limited or impeded progress.

40 CFR 51.309(d)(10)(i)(F) calls for an assessment of whether the current implementation plan elements and strategies in the regional haze SIP are sufficient to enable the State, or other states with mandatory Federal Class I areas affected by emissions from the State, to meet all established RPGs. New Mexico has adequately addressed the requirements under 40 CFR 51.309(d)(10)(i)(F). New Mexico referenced the improving visibility trends with appropriately supported data with a focus on future implementation of BART controls.

40 CFR 51.309(10)(i)(G) requires a review of the State's visibility monitoring strategy and any modifications to the strategy as necessary. New Mexico has adequately addressed the sufficiency of the monitoring strategy as required by the provisions under 40 CFR 51.309(d)(10)(i)(G). New Mexico reaffirmed the continued reliance upon the IMPROVE monitoring network. New Mexico also explained the importance of the IMPROVE monitoring network for tracking visibility trends at the Class I areas and identified no expected changes in this network.

Under 40 CFR 51.309(d)(10)(ii), states are required to submit, at the same time as the progress report SIP, a determination of the adequacy of the existing regional haze SIP and take one of four possible actions based on information in the progress report. New Mexico stated in the progress report SIP that the current Section 309 and 309(g) regional haze SIPs are adequate to meet the State's 2018 RPGs and require no further revision at this time. The EPA is approving this negative declaration from New Mexico.

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, if the choices meet the criteria of the CAA. Accordingly, this action merely approves the information and determinations in the State's progress report 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);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this rulemaking does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 2017. 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 the requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 1, 2017.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart GG—New Mexico

■ 2. In § 52.1620(e), the second table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP'' is amended by adding the entry ''New Mexico Progress Report for the State Implementation Plan for Regional Haze'' at the end of the table to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
*	*	*	*	*
New Mexico Progress Report for the State Implementation Plan for Regional Haze.	Statewide	3/14/2014	6/14/2017 [Insert **Federal Register** citation].	

[FR Doc. 2017–12208 Filed 6–13–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[EPA–HQ–OEM–2015–0725; FRL–9963–55–OLEM]

RIN 2050–AG91

Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Further Delay of Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; delay of effective date.

SUMMARY: The Environmental Protection Agency (EPA) is delaying the effective date of the Risk Management Program Amendments for an additional 20 months, to allow EPA to conduct a reconsideration proceeding and to consider other issues that may benefit from additional comment. The new effective date of the rule is February 19, 2019. The Risk Management Program Amendments were published in the **Federal Register** on January 13, 2017. On January 26, 2017 and on March 16, 2017, EPA published two documents in the **Federal Register** that delayed the effective date of the amendments until June 19, 2017. The EPA proposed in an April 3, 2017 **Federal Register** action to further delay the effective date until February 19, 2019 and held a public hearing on April 19, 2017. This action allows the Agency time to consider petitions for reconsideration of the Risk Management Program Amendments and take further regulatory action, as appropriate, which could include proposing and finalizing a rule to revise or rescind these amendments.

DATES: The effective date of the rule amending 40 CFR part 68 published at 82 FR 4594 (January 13, 2017), as delayed at 82 FR 4594 (January 26, 2017) and 82 FR 13968 (March 16, 2017), is further delayed until February 19, 2019.

ADDRESSES: The EPA has established a docket for the rule amending 40 CFR part 68 under Docket ID No. EPA–HQ–OEM–2015–0725. All documents in the docket are listed on the *https://www.regulations.gov* Web site. 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 electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: James Belke, United States Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Ave. NW., (Mail Code 5104A), Washington, DC 20460; telephone number: (202) 564–8023; email address: *belke.jim@epa.gov,* or: Kathy Franklin, United States Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Ave. NW., (Mail Code 5104A), Washington, DC 20460; telephone number: (202) 564–7987; email address: *franklin.kathy@epa.gov.*

Electronic copies of this document and related news releases are available on EPA's Web site at *https://www.epa.gov/rmp.* Copies of this final rule are also available at *https://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This final rule applies to those facilities, referred to as ''stationary sources'' under the Clean Air Act (CAA), that are subject to the chemical accident prevention requirements at 40 CFR part 68. This includes stationary sources holding more than a threshold quantity (TQ) of a regulated substance in a process. Table 5 provides industrial sectors and the associated NAICS codes for entities potentially affected by this action. The Agency's goal is to provide a guide for readers to consider regarding entities that potentially could be affected by this action. However, this action may affect other entities not listed in this table. If you have questions regarding the applicability of this action to a particular entity, consult the person(s) listed in the introductory section of this action under the heading entitled **FOR FURTHER INFORMATION CONTACT**.

TABLE 5—INDUSTRIAL SECTORS AND ASSOCIATED NAICS CODES FOR ENTITIES POTENTIALLY AFFECTED BY THIS ACTION

Sector	NAICS code
Administration of Environmental Quality Programs	924.
Agricultural Chemical Distributors:	

TABLE 5—INDUSTRIAL SECTORS AND ASSOCIATED NAICS CODES FOR ENTITIES POTENTIALLY AFFECTED BY THIS ACTION—Continued

Sector	NAICS code
Crop Production	111.
Animal Production and Aquaculture	112.
Support Activities for Agriculture and Forestry Farm	115.
Supplies Merchant Wholesalers	42,491.
Chemical Manufacturing	325.
Chemical and Allied Products Merchant Wholesalers	4,246.
Food Manufacturing	311.
Beverage Manufacturing	3121.
Oil and Gas Extraction	211.
Other	44, 45, 48, 54, 56, 61, 72.
Other manufacturing	313, 326, 327, 33.
Other Wholesale:	
Merchant Wholesalers, Durable Goods	423.
Merchant Wholesalers, Nondurable Goods	424.
Paper Manufacturing	322.
Petroleum and Coal Products Manufacturing	324.
Petroleum and Petroleum Products Merchant Wholesalers	4,247.
Utilities	221.
Warehousing and Storage	493.

B. How do I obtain a copy of this document and other related information?

This final action and pertinent documents are located in the docket (see **ADDRESSES** section). In addition to being available in the docket, an electronic copy of this document and the response to comments document will also be available at *https://www.epa.gov/rmp/final-amendments-risk-management-program-rmp-rule.*

C. Judicial Review

Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by August 14, 2017. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review.

II. Background

On January 13, 2017, the EPA issued a final rule amending 40 CFR part 68, the chemical accident prevention provisions under section 112(r)(7) of the CAA (42 U.S.C. 7412(r)). The amendments addressed various aspects of risk management programs, including prevention programs at stationary sources, emergency response preparedness requirements, information availability, and various other changes to streamline, clarify, and otherwise technically correct the underlying rules. Collectively, this rulemaking is known as the ''Risk Management Program Amendments.'' For further information on the Risk Management Program Amendments, see 82 FR 4594 (January 13, 2017).

On January 26, 2017, the EPA published a final rule delaying the effective date of the Risk Management Program Amendments from March 14, 2017, to March 21, 2017, see 82 FR 8499. This revision to the effective date of the Risk Management Program Amendments was part of an EPA final rule implementing a memorandum dated January 20, 2017, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Freeze Pending Review.'' This memorandum directed the heads of agencies to postpone until 60 days after the date of its issuance the effective date of rules that were published prior to January 20, 2017 but which had not yet become effective.

In a letter dated February 28, 2017, a group known as the ''RMP Coalition,'' [1] submitted a petition for reconsideration of the Risk Management Program Amendments (''RMP Coalition Petition'') as provided for in CAA section 307(d)(7)(B) (42 U.S.C. 7607(d)(7)(B)).[2] On March 13, 2017, the Chemical Safety Advocacy Group (''CSAG'') also submitted a petition for reconsideration and stay.[3] On March 14, 2017, the EPA received a third petition for reconsideration and stay from the State of Louisiana, joined by Arizona, Arkansas, Florida, Kansas, Kentucky, Oklahoma, South Carolina, Texas, Wisconsin, and West Virginia. The petitions from CSAG and the eleven states also requested that EPA delay the various compliance dates of the Risk Management Program Amendments.

Under CAA section 307(d)(7)(B), the Administrator may commence a reconsideration proceeding if, in the Administrator's judgement, the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period but within the period for judicial review. In either case, the Administrator must also conclude that the objection is of central relevance to the outcome of the rule. The Administrator may stay the effective date of the rule for up to three months during such reconsideration.

In a letter dated March 13, 2017, the Administrator announced the convening of a proceeding for reconsideration of the Risk Management Program Amendments (a copy of ''the Administrator's Letter'' is included in the docket for this rule, Docket ID No. EPA–HQ–OEM–2015–0725).[4] As

[1] The RMP Coalition is comprised of the American Chemistry Council, the American Forest & Paper Association, the American Fuel & Petrochemical Manufacturers, the American Petroleum Institute, the Chamber of Commerce of the United States of America, the National Association of Manufacturers, and the Utility Air Regulatory Group.

[2] A copy of the RMP Coalition petition is included in the docket for this rule, Docket ID No. EPA–HQ–OEM–2015–0725.

[3] A copy of the CSAG petition is included in the docket for this rule, Docket ID No. EPA–HQ–OEM–2015–0725. CSAG members include companies in the refining, oil and gas, chemicals, and general manufacturing sectors with operations throughout the United States that are subject to 40 CFR part 68.

[4] Pruitt, E. Scott. March 13, 2017. Letter to Justin Savage of Hogan Lovells Regarding Convening a Proceeding for Reconsideration of the Final Rule Entitled ''Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act,'' published on January 13, 2017, 82 FR 4594. Office of the Administrator, U.S. Environmental Protection Agency, Washington, DC.

explained in the Administrator's Letter, having considered the objections raised in the RMP Coalition Petition, the Administrator determined that the criteria for reconsideration have been met for at least one of the objections. EPA issued a three-month (90-day) administrative stay of the Risk Management Program Amendments, which delayed the effective date of the Risk Management Program Amendments rule for 90 days, from March 21, 2017 until June 19, 2017 (see 82 FR 13968, March 16, 2017). EPA will prepare a notice of proposed rulemaking in the near future that will provide the RMP Coalition, CSAG, the states, and the public an opportunity to comment on the issues raised in the petitions that meet the standard of CAA section 307(d)(7)(B), as well as any other matter we believe will benefit from additional comment.

III. Proposal To Delay the Effective Date

The Administrator's authority to administratively stay the effectiveness of a CAA rule pending reconsideration (without a notice and comment rulemaking) is limited to three months (see CAA section 307(d)(7)(B)) EPA believed that three months was insufficient to complete the necessary steps in the reconsideration process for the Risk Management Program Amendments and to consider other issues that may benefit from additional comment.[5] Since we expect to take comment on a broad range of legal and policy issues as part of the Risk Management Program Amendments reconsideration, on April 3, 2017 (82 FR 16146), we proposed to further delay the effective date of the Risk Management Program Amendments to February 19, 2019.

The statutory authority for this action is provided by section 307(d) of the CAA, as amended (42 U.S.C. 7607(d)), which generally allows the EPA to set effective dates as appropriate unless other provisions of the CAA control, and section 112(r)(7) of the CAA (see section IV.A below).

IV. Summary of Public Comments Received

EPA received a total of 54,117 public comments on the proposed rulemaking. Several public comments were the result of various mass mail campaigns and contained numerous copies of letters or petition signatures. Approximately 54,000 letters and signatures were contained in these several comments. The remaining comments include 108 submissions with unique content (including representative copies of form letter campaigns and joint submissions), and nine duplicate submissions. EPA also held a public hearing on April 19, 2017 where EPA received five written comments and 28 members of the public provided verbal comments (three of the speakers later submitted their testimony as written comments). Comments received during the public hearing are included in the 107 submissions with unique content. A transcript of the hearing testimony is available as a support document in the docket EPA–HQ–OEM–2015–0725 for this rulemaking. A summary of public comments and EPA's response to the comments can be found in the Response to Comments document, also available in the docket. [6]

A. Comments Regarding EPA's Legal Authority To Delay the Effective Date

In the proposed rulemaking, EPA noted that under CAA section 307(d), the Agency may set effective dates as appropriate through notice and comment rulemaking unless another provision of the CAA controls. In the past, EPA has used this authority in conjunction with the reconsideration process when the administrative stay period of three months, which the Administrator may invoke without notice and comment, would be insufficient to complete the necessary process for reconsideration.

Several industry trade associations agreed that EPA had authority under CAA section 307(d) to conduct a notice and comment rulemaking delaying the effective date for this rulemaking. Some noted that, unlike other CAA provisions, there are no provisions in CAA section 112(r)(7) requiring a specific, earlier effective date. Some pointed out that, in contrast to several other CAA provisions (*see, e.g.,* CAA section 112(e)(1), CAA section 112(i)(3)(A), and CAA section 112(j)(5)), CAA section 112(r)(7)(A) gives the Administrator the flexibility to make a rule effective with no specific outside date beyond that which ''assur[es] compliance as expeditiously as practicable.'' In light of EPA's commitment to take further regulatory action in the near future, with the potential for a broad range of rule revisions (82 FR 16148 through 16149, April 3, 2017), and the substantial resources required to prepare for compliance mentioned in the final Risk Management Program Amendments (82 FR 4676, January 13, 2017), these commenters agreed that the 20-month delay in the effective date would be as expeditiously as practicable. Several of these commenters also identified 5 U.S.C. 705 in the Administrative Procedure Act as a potential vehicle for postponing the effective date indefinitely in connection with the pending litigation.

Other commenters contested EPA's authority to delay the effective date as proposed. A group of advocacy organizations, as well as a legal institute affiliated with a law school, argued that the 90-day stay provision in CAA section 307(d)(7)(B) is the maximum period that a rule can be stayed or have its effectiveness delayed in connection with a reconsideration. Noting that, except for the 90-day stay provision, the subparagraph provides that ''reconsideration shall not postpone the effectiveness of the rule,'' one commenter contends no additional exceptions can be implied. The commenter supports its position by citing *Natural Resources Defense Council* v. *Reilly,* 976 F.2d 36, 40–41 (D.C. Cir. 1992). Another commenter argues that EPA had ''no excuse'' for not seeking comment on its first two delays of effectiveness, making further delay impermissible.

More generally, commenters opposed to the proposed delay of effectiveness sought to rely on previous findings in the rulemaking record for the Risk Management Program Amendments. Noting that CAA section 112(r)(7)(B) provides that the regulations under that paragraph should provide for the prevention and detection of, and the response to, accidental releases ''to the greatest extent practicable,'' one commenter argues that a 20-month delay in effectiveness would run counter to the statute when EPA in the Risk Management Program Amendments already determined it was practicable to implement these regulations sooner. The commenter notes that paragraph (B) of CAA section 112(r)(7) requires rules to be applicable to a stationary source no later than three years after promulgation, so extending the effective date 20 months would ''inevitably result in pushing some or all of the compliance deadlines far beyond three years.'' The commenter viewed EPA as needing a more complete justification than if it were setting ''a new policy created on a blank slate.'' According to the commenter, EPA failed to justify its changed position. In the view of the commenter, EPA's

[5] See the proposed rule notice published April 3, 2017, 82 FR at 16148–16149.

[6] June 2017. EPA. Response to Comments on the 2017 Proposed Rule Further Delaying the Effective Date of EPA's Risk Management Program Amendments (April 3, 2017; 82 FR 16146). This document is available in the docket for this rulemaking.

discussion of compliance dates for new provisions in the Risk Management Program Amendments final rule (82 FR 4675–80, January 13, 2017) demonstrates that the 20-month delay in effectiveness does not comply with ''as expeditiously as practicable'' under CAA section 112(r)(7)(A).

Commenters also dispute the basis for convening a reconsideration proceeding by criticizing the BATF West finding itself and whether its publication two days before the close of comments made it impracticable to comment on the report. One commenter noted several of the parties requesting reconsideration in fact mentioned the BATF West finding in their comments. Another commenter objected to EPA not specifying what other issues met the reconsideration standard. More generally, commenters opposed to the delay of effectiveness found EPA lacked sufficient detail in its explanation of the basis for proposing to delay effectiveness of the Risk Management Program Amendments for them to be able to comment. Commenters further asserted that a further delay makes it more likely that another incident like the West Fertilizer explosion and other events discussed in the record, will occur. Commenters also expressed a concern that EPA could repeatedly delay the effective date based on the logic in the proposed rule.

Response: EPA notes that CAA section 112(r)(7)(A) does not contain any language limiting ''as expeditiously as practicable'' to an outside date (*e.g.,* ''in no case later than date X''). The volume of comments received on the proposed rule validates our expectation that there will be a high level of interest in the broad range of issues we expect to take comment on. For example, in this rulemaking, several commenters have criticized the methodology of the BATF West finding and raised substantive concerns about various rule provisions. We have consistently stated that, beyond those issues that meet the CAA section 307(d)(7)(B) standard for reconsideration, we intend to raise other matters that we believe would benefit from additional comment (see, the Administrator's Letter).[7] Many of the decisions underlying the Risk Management Program Amendments are policy preferences based on weighing factors in the record that could be rationally assessed in different ways. We continue to believe that evaluating these issues will be difficult and time consuming. A delay of effectiveness will allow EPA time for a comprehensive review of objections to the Risk Management Program Amendments rule without imposing the rule's substantial compliance and implementation resource burden when the outcome of the review is pending.

A delay of 20 months is a reasonable length of time to engage in the process of revisiting issues in the underlying Risk Management Program Amendments. Contrary to some commenters assertions (and contrary to the urging of those commenters who asked that we invoke the Administrative Procedure Act (APA) section 705), we did not propose and are not finalizing an indefinite delay of effectiveness. During this period, the pre-Amendments 40 CFR part 68 rules will remain in effect. As we noted when we proposed and finalized the Risk Management Program Amendments, ''[t]he [Risk Management Program] regulations have been effective in preventing and mitigating chemical accidents in the United States'' (see 82 FR 4595, January 13, 2017). We discuss additional bases for the delay of effectiveness for 20 months in section V of the preamble. For all of these reasons, we conclude that the delay of effectiveness for 20 months is as expeditious as practicable for allowing the rule to go into effect.

We disagree with the view that the three month stay provision in CAA section 307(d)(7)(B) prohibits the use of rulemaking to further delay the effectiveness of rules that are not in effect. As an initial matter, were no reconsideration involved, a rule with a future effective date could have its effective date delayed simply by a timely rulemaking amending its effective date before the original date. *Cf. NRDC* v. *EPA,* 683 F.2d 752, 764 (3d Cir. 1982) (discussing application of rulemaking procedures to action to postpone effective date of rule); *NRDC* v. *Abraham,* 355 F.3d 179, 203 (2d Cir. 2004) (discussing amendment of effective date of rule through notice-and-comment process). While one commenter criticizes the initial delay of effectiveness for relying on the good cause exception (arguing that, in lieu of the initial good cause delay, we should have used a notice and comment procedure to delay the effective date), and the subsequent 90-day stay for continuing that delay, neither of those actions were challenged. There is no reasonable dispute that the Risk Management Program Amendments are not yet in effect. EPA has explained in both the proposed rule and in the Administrator's Letter of March 13, 2017,[8] that part of its purpose in proposing to delay the effective date 20 months is to not only to conduct a reconsideration on the issues identified in that letter but also to solicit comment on any other matter that will benefit from additional comment. The interpretation of CAA section 307(d)(7)(B) urged by the commenters would say that EPA's ability to use a notice and comment procedure to delay the effective date for these matters that EPA seeks to solicit additional comment on is negated when there is a reconsideration ongoing as well.

We also disagree with the commenters' view that the phrase ''reconsideration shall not postpone the effective date of the rule'' is meant to prohibit using a notice and comment procedure or any means other than the three month stay in CAA section 307(d)(7)(B) to delay a rule that is not in effect. In quoting the statute, the comment omits the word ''[s]uch.'' In context, ''such reconsideration'' follows a discussion of the process for convening reconsideration and precedes the three month stay provision. A natural reading of the language is that the act of convening reconsideration does not, by itself, stay a rule but that the Administrator, at his discretion, may issue a stay if he has convened a proceeding. The three-month limitation on stays issued without rulemaking under CAA section 307(d)(7)(B) does not limit the availability or length of stays issued through other mechanisms. Furthermore, CAA section 307(d) expressly contemplates the ''revision'' of rules to which it applies. See CAA section 307(d)(1); see also CAA section 112(r)(7)(E) (regulations under CAA section 112(r) ''shall for purposes of sections 113 . . . and 307 . . . be treated as a standard in effect under subsection (d) of [section 112]''). EPA is issuing this rule as a revision of the Risk Management Program Amendments.

The case of *Natural Resources Defense Council* v. *Reilly,* 976 F.2d 36 (D.C. Cir. 1992) (*NRDC*) does not prohibit EPA from using rulemaking procedures under CAA section 307(d) to modify and delay the effective date of the Risk Management Program Amendments. In that case, EPA had made the finding that radionuclides

[7] Pruitt, E. Scott. March 13, 2017. Letter to Justin Savage of Hogan Lovells Regarding Convening a Proceeding for Reconsideration of the Final Rule Entitled ''Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act,'' published on January 13, 2017, 82 FR 4594. Office of the Administrator, US Environmental Protection Agency, Washington, DC.

[8] Pruitt, E. Scott. March 13, 2017. Letter to Justin Savage of Hogan Lovells Regarding Convening a Proceeding for Reconsideration of the Final Rule Entitled ''Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act,'' published on January 13, 2017, 82 FR 4594. Office of the Administrator, US Environmental Protection Agency, Washington, DC.

were hazardous air pollutants under the pre-1990 CAA. That finding, in turn, triggered a series of mandatory duties under the CAA that required promulgation of emission standards. EPA did so after several court orders but, under a series of rules under CAA section 301 and the pre-1990 CAA section 112, continuously stayed the effectiveness of those rules. The 1990 Amendments added special provisions for radionuclides, saving the former rules, delaying the effectiveness of a category of rules impacting medical facilities regulated by the Nuclear Regulatory Commission (NRC), and establishing specific procedures for exempting NRC-licensed sources. *See* CAA section 112(d)(9), CAA section 112(q). EPA conducted a rulemaking under CAA section 112(d)(9) but lacked sufficient data to promulgate an exemption for most NRC-licensed facilities. Nevertheless, EPA promulgated a stay of effectiveness of the radionuclide rules, using CAA section 301, while it gathered the necessary information to establish exemptions. (See *NRDC* at 38–39.) EPA characterized its rule as a transitional rule necessary to implement the intent of the 1990 Amendments. *Id.* at 40.

The *NRDC* court observed that the pre-1990 CAA had a highly circumscribed schedule for promulgating hazardous air pollutant rules. *NRDC* at 41. Recognizing that its past precedents did not allow the grant of general rulemaking authority to override specific provisions of the CAA, the court held that ''[i]n the face of such a clear statutory command, we cannot conclude that section 301 provided the EPA with the authority to stay regulations that were subject to the deadlines established by [former] section 112(b).'' *Id.*

In contrast to the ''clear statutory command'' to promulgate rules for radionuclides once they were found to be hazardous air pollutants, CAA section 112(r) contains no similar mandate to promulgate the Risk Management Program Amendments. There is no dispute that EPA discharged its mandatory duty under CAA section 112(r)(7)(B) to promulgate ''reasonable regulations'' when it promulgated the Risk Management Program rule in 1996. These rules have been in effect and stationary sources that have present a threshold quantity of a regulated substance must comply with 40 CFR part 68 as in effect. The Risk Management Program Amendments were not promulgated to comply with a court order enforcing a mandatory duty. In contrast to the specific deadlines in the pre-1990 CAA for hazardous air pollutant regulation and the detailed structure in CAA section 112(d)(9) and CAA section 112(q) for addressing radionuclides under the amended CAA, CAA section 112(r)(7)(A) provides the Administrator substantial discretion regarding the setting of an effective date. The statutory framework for a discretionary rule under CAA section 112(r)(7) differs greatly from the ''highly circumscribed schedule'' analyzed by the *NRDC* court. Absent an otherwise controlling provision of the CAA, CAA section 307(d) allows EPA to set a reasonable effective date.

We view the provision in CAA section 112(r)(7)(B) regarding when regulations shall be ''applicable'' to a stationary source to not prohibit the delay of effectiveness we promulgate in this rule. First, we note that February 2019 is before January 2020 (three years after the January 2017 promulgation), so even assuming the provision in question requires compliance by three years after promulgation of the Risk Management Program Amendments,[9] it is speculative to say that it is ''inevitable'' that some compliance dates will be ''pushed off far beyond three years'' from promulgation. Even if the commenter's intuition is correct, the argument is premature. A challenge to compliance dates after January 2020 should be brought in litigation over a rule that establishes such a date. Second, the appropriate rule to challenge compliance dates set in the Risk Management Program Amendments would be the underlying rule (*i.e.,* the Risk Management Program Amendments rule promulgated on January 13, 2017) that established compliance dates. This rule does not impact compliance dates except for those dates that would be triggered prior to February 2019. If EPA proposes amending compliance dates beyond January 13, 2020, then this issue will need to be addressed.

While CAA section 112(r)(7)(B) contains a requirement that EPA's regulations ''provide, to the greatest extent practicable,'' for prevention, detection, and response to accidental releases, that subparagraph places this requirement in the context of a mandate for the regulations to be ''reasonable.'' The phrase ''to the greatest extent practicable'' does not prohibit weighing the difficulties of compliance planning and other implementation issues.

This action itself is not the convening of reconsideration, therefore, the questions of whether the arson finding by the BATF was proper are outside the scope of this rule. Even if the comment were within the scope of this rulemaking, the mention of the BATF finding in a few scattered comments does not mean that it was practicable for the public generally and the hundreds of commenters to meaningfully address the significance of the finding for a rule with multiple issues and hundreds of supporting documents. EPA is not taking action under APA section 705 at this time.

B. Comments Supporting a Delay of the Effective Date

Many commenters supported EPA's proposal to delay the effective date of the final rule to February 19, 2019. These commenters included industry associations, regulated facilities, state government agencies, and others. These commenters gave various reasons for delaying the final rule's effective date.

1. Comments Arguing That EPA Finalized Provisions That Were Not Discussed in the Proposed Rule

Several commenters indicated the final rule included changes on which the public was never offered an opportunity to comment as required by the CAA. These commenters highlighted a new provision in the final rule requiring regulated facilities to disclose any information relevant to emergency planning to local emergency planners, and a new final rule trigger for third-party audits allowing an implementing agency to require such an audit due to ''conditions at the stationary source that could lead to the release of a regulated substance'' as issues that warrant reconsideration and delaying the effective date of the final rule. These commenters argued that the public was deprived of effective notice and opportunity to comment on the new provisions.

Response: EPA agrees that the final rule included some rule provisions that may have lacked notice and would benefit from additional comment and response.

2. Comments Regarding the Arson Finding for the West Fertilizer Explosion

Many commenters indicated that the finding by the Bureau of Alcohol, Tobacco, and Firearms (BATF) that the West Fertilizer explosion was caused by

[9] EPA does not concede that the provision requires all compliance deadlines to be set three years from the date of any rule under CAA section 112(r)(7)(B)(i). This provision more naturally is read to refer to the earliest possible compliance date for a newly-regulated stationary source. This reading is confirmed by the rest of the sentence, which refers to when a stationary source with a newly-listed substance must comply with CAA section 112(r)(7)(B) regulations. The Risk Management Program Amendments itself describes the rationale for when already-regulated sources must comply with the Risk Management Program Amendments.

arson undermined the basis for the rule and that this necessitates delaying the final rule's effective date, in order to reconsider its provisions, in light of the BATF finding. Some complained the timing of BATF's announcement a few days before the end of the rule comment period precluded the development and submission of meaningful comments addressing this change in circumstances and its implications.

Response: EPA agrees that the timing of the BATF finding on the West Fertilizer incident made it impracticable for many commenters to meaningfully address the significance of this finding in their comments on the rule. Additionally, delaying the effective date of the final rule to February 19, 2019, will give the Agency an opportunity to consider comments on the BATF finding and take further action to reconsider the rule, propose any necessary changes, and provide opportunity for public comment on any changes made.

3. Other Comments Raised

Many commenters indicated that the effective date of the rule should be delayed because its information disclosure provisions create security risks, and these risks have not been adequately addressed by EPA in the final rule. Other commenters objected to other specific provisions of the final rule (*e.g.,* third-party audits, safer technology and alternatives analysis (STAA), incident investigation requirements, etc.), indicating that EPA had provided no evidence that these provisions would produce the benefits claimed by EPA, and that EPA should delay the effective date of the final rule either to provide such evidence or remedy these deficiencies by making substantive changes to the rule. Numerous commenters argued that EPA failed to show that the benefits of the final rule outweigh its costs and made other flaws in the regulatory impact analysis, which the commenters contended were grounds for delaying the effective date of the final rule and reconsidering its provisions. One trade association stated that the Risk Management Program Amendments are not needed and that the current Risk Management Program has been effective in identifying and reducing risks and preventing offsite impacts based on EPA data showing that between 2004 and 2013 there has been a decrease of over 60% of all RMP-reportable events. Another trade association believes that the amendments raise substantial questions of policy and significantly increase the regulatory burden without corresponding benefits and should be considered for repeal under Executive Orders 13771, ''Reducing Regulation and Controlling Regulatory Costs'' [10] and 13777, ''Enforcing the Regulatory Reform Agenda.'' [11]

A commenter representing a group of State agencies argued that the effective date should be delayed because the final rule created unjustified burdens on state and local emergency responders. Several commenters indicated that EPA did not adequately coordinate with OSHA during the rulemaking process, and that EPA should delay the effective date of and reconsider the rule in order to coordinate any amendments to the Risk Management Program with changes made by OSHA to its Process Safety Management standard.

Some commenters also argued that the effective date should be delayed because EPA did not adequately address small business concerns, or made other procedural errors during the rulemaking process.

Response: While it is not necessary for EPA to address the substance of these claims in this rulemaking, we note they represent a wide-ranging and complex set of policy and procedural issues. Some of these issues would not meet the standard for reconsideration under CAA section 307(d)(7)(B), but present substantial policy concerns that EPA may wish to address while it conducts the reconsideration process for issues that meet that reconsideration standard. Whether or not EPA agrees with commenters on the merits of these claims, the Agency believes the existence of such a large set of unresolved issues demonstrates the need for careful reconsideration and reexamination of the Risk Management Program Amendments. Therefore, while EPA does not now concede that it should make the particular regulatory changes that these commenters have recommended, or that the Agency made errors in its regulatory impact analysis or rulemaking procedures, EPA concurs with commenters to the extent that they argue for finalizing the proposed delay in the effective date of the Risk Management Program Amendments rule in order to conduct a reconsideration proceeding. That proceeding will allow EPA to address commenters' issues as appropriate.

C. Comments Opposing a Delay of the Effective Date

Many commenters opposed EPA's proposal to further delay the effective date of the final rule to February 19, 2019. These commenters included environmental advocacy groups, other non-governmental organizations, private citizens, an association representing fire fighters, an academic institution, and others. These commenters gave various reasons for opposing EPA's proposal to delay the final rule's effective date, which are discussed individually below.

1. Comments Arguing That a Further Delay of the Rule's Effective Date Will Cause Harm

Many commenters indicated that EPA should not delay the effective date because delaying the rule's implementation will fail to prevent or mitigate chemical accidents that will cause harm to workers at regulated facilities and members of the public in surrounding communities.

Response: EPA disagrees that further delaying the final rule's effective date will cause such harm. EPA notes that delaying the effective date of the Risk Management Program Amendments rule simply maintains the status quo, which means that the existing RMP rule remains in effect. EPA also notes that compliance dates for most major provisions of the Risk Management Program Amendments rule were set for four years after the final rule's effective date, so EPA's delay of that effective date has no immediate effect on the implementation of these requirements. As EPA has previously indicated, the existing RMP rule has been effective in preventing and mitigating chemical accidents, and these protections will remain in place during EPA's reconsideration of the Risk Management Program Amendments.[12]

2. Comments Arguing That the EPA's Proposal To Further Delay the Rule's Effective Date Is Arbitrary and Capricious

Three commenters claimed that EPA's rulemaking to extend the effective date

[10] See *Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs* which was signed on January 30, 2017 and published in the **Federal Register** on February 3, 2017 (82 FR 9339). Executive Order 13771 requires that any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations *https://www.federalregister.gov/documents/2017/02/03/2017-02451/reducing-regulation-and-controlling-regulatory-costs.*

[11] See *Executive Order 13777: Enforcing the Regulatory Reform Agenda* which was signed on February 24, 2017 and published in the **Federal Register** on March 1, 2017 (82 FR 12285). Executive Order 13777 tasks each Federal agency with identifying regulations that are unnecessary, ineffective, impose costs that exceed benefits, or interfere with regulatory reform initiatives and policies for repeal, replacement, or modification *https://www.federalregister.gov/documents/2017/03/01/2017-04107/enforcing-the-regulatory-reform-agenda.*

[12] See 82 FR 4595, January 13, 2017.

of the Risk Management Program Amendments rule to February 19, 2019 is arbitrary and capricious. Commenters stated several reasons that the proposed delay is arbitrary and capricious, including: The issues presented for reconsideration do not meet the statutory requirement for reconsideration under CAA section 307(d)(7)(B), and, even if any met the CAA section 307(d)(7)(B) standard, EPA lacks authority to extend a rule's effective date beyond 90 days pending reconsideration; EPA failed to explain why it is appropriate to forgo the benefits of the rule during the period of the stay; EPA failed to adequately justify its change in position; and EPA has not shown that a delay of 20 months assures compliance ''as expeditiously as practicable'', as required under CAA section 112(r)(7)(A) or provides to ''the greatest extent practicable'' for prevention, detection, and response, as required under CAA section 112(r)(7)(B). One commenter also stated that EPA appeared ''to pick the duration it proposes—20 months—out of a hat,'' and provided no explanation or justification for this timeframe.

Response: EPA disagrees that this rulemaking is arbitrary and capricious. In order to conduct a rulemaking that is reasonable, and therefore not arbitrary and capricious, the courts have held that an agency must ''set forth its reasons'' for its decision and ''establish a rational connection between the facts found and the choice made.'' [13] EPA has done so here. First, the reconsideration process that EPA has initiated does meet the statutory test for such a process. As EPA stated in the proposed rule, under CAA section 307(d)(7)(B), the Administrator must commence a reconsideration proceeding if, in the Administrator's judgement, the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period but within the period for judicial review, and the objection is of central relevance to the outcome of the rule.

The Administrator's Letter of March 13, 2017,[14] specified at least one issue—BATF's West finding—met the CAA section 307(d)(7)(B) standard for reconsideration. The letter does not reach conclusions on other issues in the RMP Coalition petition that meet this standard, but notes that at least some issues may have lacked notice and would benefit from additional comment and response. All three petitioners argued that the final rule included new requirements that were not included in the proposed rule, requirements that petitioners would have strongly objected to if they had been afforded an opportunity to comment. In particular, the petitioners cited a provision in the final rule requiring regulated facilities to disclose any information relevant to emergency planning to local emergency planners and a requirement to perform a third-party audit when an implementing agency requires such an audit due to ''conditions at the stationary source that could lead to the release of a regulated substance.'' Without conceding that these provisions lacked adequate notice, EPA recognizes that these provisions include core requirements for major rule provisions, and so are of central relevance to the outcome of the rule. Thus, BATF's West finding meets the criteria for reconsideration under CAA section 307(d)(7)(B), and it make practical sense for EPA to provide an opportunity for comment on these other issues in the reconsideration proceeding.[15]

EPA also disagrees with one commenter's assertion that the lack of discussion in the proposed rule of the forgone benefits of the rule during the period of the delay of effectiveness makes the delay arbitrary and capricious. As an initial matter, the regulatory impact analysis for the Risk Management Program Amendments was unable to conclusively show that the benefits of the final rule exceeded its costs. The lack of a quantification of benefits in the final rule regulatory impact analysis would make a quantification of forgone benefits during the period of a delay speculative at best. However, as noted above, most provisions have a compliance date of 2021, therefore any benefits from compliance would not be impacted.

In deciding whether to implement a regulation, EPA may reasonably consider not only its benefits, but also its costs. Petitioners have claimed that the final Risk Management Program Amendments' new provisions that were not included in the proposed rule may actually increase the risks and burdens to states, local communities, emergency responders, and regulated entities rather than fixing the problems identified in the proposed rule. It is completely reasonable for EPA to delay implementation of and reexamine the Risk Management Program Amendments when the Agency becomes aware of information, such as that provided by petitioners, that suggests one or more of these provisions may potentially result in harm to regulated entities and the public.

Petitioners' claims that the new final rule provisions may cause harm to regulated facilities and local communities, and the speculative but likely minimal nature of the forgone benefits, form another rational basis for EPA to delay the effectiveness of the Risk Management Program Amendments and determine whether they remain consistent with the policy goals of the Agency.

EPA also disagrees with a commenter's assertion that delaying the final rule's effective date by 20 months violates the requirement under CAA section 112(r)(7)(A) to assure compliance as expeditiously as practicable, or the requirement under CAA section 112(r)(7)(B) to promulgate reasonable regulations to the greatest extent practicable. EPA believes that the language of these sections of the CAA gives the Administrator broad authority to determine what factors are relevant to establishing effective dates that are practicable (unlike other sections of the CAA, where Congress constrained ''as practicable'' to include certain defined time limits). In exercising this authority, EPA believes effective dates must account for all relevant factors. In this case, delaying the effective date of the rule during the reconsideration proceeding is reasonable and practicable because the Agency does not wish to cause confusion among the regulated community and local responders by requiring these parties to prepare to comply with, or in some cases, immediately comply with, rule provisions that might be changed during the subsequent reconsideration. This is particularly true for provisions that might result in unanticipated harm to facilities and local communities, as petitioners have alleged may occur. The Agency notes that compliance with most major provisions in the final rule

[13] See *Tourus Records, Inc.* v. *D.E.A.,* 259 F.3d 731, 736 (D.C. Cir. 2001).

[14] Pruitt, E. Scott. March 13, 2017. Letter to Justin Savage of Hogan Lovells Regarding Convening a Proceeding for Reconsideration of the Final Rule Entitled ''Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act,'' published on January 13, 2017, 82 FR 4594. Office of the Administrator, U.S. Environmental Protection Agency, Washington, DC.

[15] Even if no issue met the statutory standard for when the Administrator must convene a proceeding for reconsideration under CAA section 307(d)(7)(B), the Administrator retains the discretion to convene a reconsideration process. *See Trujillo* v. *Gen. Elec. Co.,* 621 F.2d 1084, 1086 (10th Cir. 1980) (''Administrative agencies have an inherent authority to reconsider their own decisions, since the power to decide in the first instance carries with it the power to reconsider.''); *Dun & Bradstreet Corp. Found. V. U.S. Postal Serv.,* 946 F.2d 189, 193 (2d Cir. 1991) (''It is widely accepted that an agency may, on its own initiative, reconsider its interim or even its final decisions, regardless of whether the applicable statute and agency regulations expressly provide for such review.'')

would not be required until 2021, so delaying the effective date of the final rule would have minimal effect on the benefits derived from compliance with these provisions.

Lastly, EPA disagrees that it picked the 20-month duration for the proposed delay in effective date ''out of a hat,'' or provided no explanation or justification for this timeframe. As EPA explained in the proposed rule (82 FR 16148 through 16149, April 3, 2017): ''As with some of our past reconsiderations, we expect to take comment on a broad range of legal and policy issues as part of the Risk Management Program Amendments reconsideration . . .,'' and,

> This timeframe would allow the EPA time to evaluate the objections raised by the various petitions for reconsideration of the Risk Management Program Amendments, consider other issues that may benefit from additional comment, and take further regulatory action. This schedule allows time for developing and publishing any notices that focus comment on specific issues to be reconsidered as well as other issues for which additional comment may be appropriate. A delay of the effective date to February 19, 2019, provides a sufficient opportunity for public comment on the reconsideration in accordance with the requirements of CAA section 307(d), gives us an opportunity to evaluate and respond to such comments, and take any possible regulatory actions, which could include proposing and finalizing a rule to revise the Risk Management Program amendments, as appropriate.

This rationale for the proposed duration of the effective date is neither arbitrary nor capricious.

3. Comments Arguing Inadequate Rationale Was Provided for Further Delay of Effective Date

Several commenters argued that EPA did not provide a valid basis or reasoned explanation for its proposal to delay, for why the petitions should take more than three months to consider, or how the 20-month delay period was determined.

Response: The three petitions for reconsideration cover numerous policy and legal issues with the Risk Management Program Amendments. As stated in the April 3, 2017 proposal (82 FR 16148 through 16149) these issues may be difficult and time consuming to evaluate, and given the expected high level of interest from stakeholders in commenting on these issues, we proposed a longer delay of the effective date to allow additional time to open these issues for review and comment. Additionally, in both the Administrator's Letter of March 13, 2017 [16] as well as the proposed delay of effectiveness rule, EPA indicated it may raise other matters we believe will benefit from additional comment (82 FR 16148 through 16149, April 3, 2017). Resolution of issues may require EPA to revise the amendments through a rulemaking process, which would involve a developing a proposal to focus comment of specific issues as well as other issues for which additional comment may be appropriate, allowing sufficient opportunity for public comment, review and respond to comments, and develop any final revisions. The rulemaking process also must allow time for Agency, inter-agency and OMB review of the proposed and final rule. Based on EPA rulemaking experience, EPA decided that a 20-month delay was warranted. Some industry commenters have pointed out that without such a delay, regulated parties would need to expend resources to prepare for compliance with the Risk Management Program Amendments final rule provisions while further changes to the program are being contemplated.

4. Comments Indicating That the BATF Arson Finding Should Not Affect the Basis of the Rule

Many commenters indicated that the BATF finding of arson should not cause EPA to reconsider the final rule. These commenters indicated that Executive Order 13650 was not specifically based on the West Fertilizer event, and that EPA did not justify the Risk Management Program Amendments rule on that single incident, but rather that EPA indicated an average of approximately 150 chemical accidents have occurred each year, and the rule's provisions were intended to address all such accidents. Other commenters noted that conditions at West Fertilizer enabled the fire to escalate into a massive detonation, and lack of effective communication contributed to the needless deaths of emergency responders—issues that some rule amendments addressed by improving emergency preparedness. Some commenters also stated that the BATF finding was not actually based on evidence of arson, but rather relied on a process of elimination called ''negative corpus'' to project a conclusion without evidence, and therefore the BATF finding does not provide grounds for the petitioner's objection to the final rule.

Response: As an initial matter, the Agency's decision to convene a proceeding for reconsideration was made in a separate action—the Administrator's Letter of March 13, 2017. The merits of that decision are not properly subject to collateral attack in this rule. The substantive impact of the BATF finding on the policy issues opened in the reconsideration-related proposed rule may be addressed in the notice and comment period for that rule. The focus of this delay of effectiveness rule is to provide sufficient time to conduct a proceeding on the complex set of issues identified by the petitions as well as other issues that merit additional comment.

EPA disagrees that the BATF finding of arson as the cause of the West Fertilizer explosion does not provide grounds for reconsideration of the Risk Management Program Amendments final rule. While EPA agrees that the incident was not the sole justification for Executive Order 13650, and the Agency did not solely rely on it as justification for the Risk Management Program Amendments, there is no question that the event was the proximate trigger for Executive Order 13650 [17] and prominently featured in the Agency's Risk Management Program Amendments proposed rule.[18] EPA believes the prominence of the incident in the policy decisions underlying Executive Order 13650 and the Risk Management Program Amendments rule makes the BATF finding regarding the cause of the incident of central relevance to the rule amendments. If the cause of the West Fertilizer explosion had been known sooner, the Agency may have possibly given greater consideration to potential security risks posed by the proposed rule amendments. All three of the petitions

[16] Pruitt, E. Scott. March 13, 2017. Letter to Justin Savage of Hogan Lovells Regarding Convening a Proceeding for Reconsideration of the Final Rule Entitled ''Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act,'' published on January 13, 2017, 82 FR 4594. Office of the Administrator, U.S. Environmental Protection Agency, Washington, DC.

[17] See Executive Order 13650, Actions to Improve Chemical Safety and Security—A Shared Commitment; Report for the President, May, 2014, pp 1: ''The West, Texas, disaster in which a fire involving ammonium nitrate at a fertilizer facility resulted in an explosion that killed 15 people, injured many others, and caused widespread damage, revealed a variety of issues related to chemical hazard awareness, regulatory coverage, and emergency response. The Working Group has outlined a suite of actions to address these issues . . .''

[18] In the proposed rule, EPA referred to the West Fertilizer event more than 15 times. For example, see 81 FR 13640, column 1: ''In response to catastrophic chemical facility incidents in the United States, including the explosion that occurred at the West Fertilizer facility in West, Texas, on April 17, 2013 that killed 15 people, President Obama issued Executive Order 13650, ''Improving Chemical Facility Safety and Security,'' on August 1, 2013.''

for reconsideration and many of the commenters discuss potential security concerns with the rule's information disclosure requirements to LEPCs and the public. The RMP Coalition petition and some commenters argue that knowing that the West Fertilizer incident was an intentional, rather than an accidental act, would likely have resulted in more focus on enhanced facility security measures and justifications for the need for third-parties to obtain facility information, with protections on data use and further disclosure.

Clearly, EPA does not desire to establish regulations that increase security risks. While EPA has not concluded that the final rule would increase such risks, the petitioner's concerns, which are echoed by many other commenters, require careful consideration, and cannot be dismissed out of hand.

Regarding these commenters claims that the BATF relied on an invalid form of reasoning (*i.e.,* ''negative corpus'') to reach its conclusion regarding the cause of the West Fertilizer explosion, EPA cannot evaluate these commenters claims without obtaining detailed information on the BATF investigation. The decision to reconsider simply acknowledges the fact that BATF made this finding, that the finding went to issues of central relevance to the Risk Management Program Amendments and that the finding was late enough in the comment period to make it impracticable for many commenters to meaningfully comment on the finding's significance for the rule. The substantive merits of the BATF methodology and its conclusion would be more appropriate to consider in a reconsideration rulemaking process addressing the Risk Management Program Amendments issues impacted by the finding. To the extent questions remain concerning the cause of the West Fertilizer explosion, EPA believes these argue for finalizing the delay of effective date of the Risk Management Program Amendments in order to give the Agency time to better understand the basis for BATF's conclusions.

Accordingly, EPA has decided to finalize the proposed delay of the effective date to February 19, 2019. This delay will give the Agency an opportunity to reconsider the Risk Management Program Amendments rule, propose changes to the rule as necessary, and provide additional opportunity for members of the public to submit comments on the proposal to EPA.

5. Comments Arguing That the Petitioners' Other Claims Are Without Merit

Some commenters stated that EPA and the petitioners for reconsideration failed to identify objections that either arose after the period for public comment or were impracticable to raise during this period, as required under CAA section 307(d)(7)(B). One of these commenters stated that most of the objections that were raised by petitioners were ''simply recycled from the comment period'' and that the ''remainder address issues that cannot possibly be considered ''of central relevance'' to the ''Chemical Disaster Rule.'' This commenter also indicated that several parties commented on the BATF finding during the public comment period for the Risk Management Program Amendments rulemaking, and that this demonstrated that it was not impracticable to raise the issue during the comment period. This commenter noted that EPA had responded to these comments and found that ''it would be inappropriate to suspend the rulemaking based on outcomes of the incident investigation of the West Fertilizer explosion.''

Response: EPA disagrees that petitioners have failed to identify one or more objections that either arose after the period for public comment or were impracticable to raise during that period. The decision to convene a proceeding for reconsideration was made in the Administrator's Letter of March 13, 2017.[19] The substance of that decision is a separate action from this rule on the length of a delay of effectiveness. Petitioners, as well as numerous commenters, including industry trade associations, regulated facilities, state government agencies, and others asserted the final rule imposed extensive new requirements on covered facilities that were not contained in the proposed rule. These commenters maintained that two major provisions of the final rule were not contained in the proposal, including a new provision in the final rule requiring regulated facilities to disclose any information relevant to emergency planning to local emergency planners, and a new trigger for third-party audits. EPA agrees that these concerns warrant additional public comment and can be incorporated into the reconsideration process for the Risk Management Program Amendments rule.[20]

While EPA acknowledges that several commenters included the BATF arson finding in their comments on the Risk Management Program Amendments proposed rule, the Agency does not view two days (*i.e.,* the amount of time between BATF's announcement of its arson finding and the close of the public comment period for the Risk Management Program Amendments proposed rule) as a sufficient time period to evaluate the full implications of such important new information. Several commenters also noted that the BATF's arson finding was announced too late for them to adequately consider this information within their comments to EPA.

Also, when EPA stated, in responding to comments on the proposed Risk Management Program Amendments, that it would be inappropriate to suspend the rulemaking based on outcomes of the incident investigation of the West Fertilizer explosion, the Agency had not yet received the petitions that prompted its reconsideration proceeding, as well as comments on the proposal to delay the rule's effective date, both of which assert that the information disclosure provisions contained in the final Risk Management Program Amendments may actually increase or introduce new security risks to RMP facilities, emergency responders, and communities. EPA believes it would be remiss for the Agency to allow the final rule to become effective without fully evaluating this new information. As previously indicated, EPA does not desire to establish regulations that increase security risks.

Finally, several commenters also stated that EPA added more than 100 new documents to the rulemaking docket after the close of the comment period, and indicated that several of these documents were used by EPA to support the Agency's position on core provisions of the final rule, including the STAA and third-party audit provisions. These commenters stated that because the comment period had already closed when this information was added to the docket, the public was denied an opportunity to review and comment on the additional information. Without taking a position on whether these documents required additional comment under the rulemaking procedures of CAA section 307(d), a benefit of reopening comment on the topics that meet the reconsideration standard of CAA section 307(d)(7)(B)

[19] Pruitt, E. Scott. March 13, 2017. Letter to Justin Savage of Hogan Lovells Regarding Convening a Proceeding for Reconsideration of the Final Rule Entitled ''Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act,'' published on January 13, 2017, 82 FR 4594. Office of the Administrator, U.S. Environmental Protection Agency, Washington, DC.

[20] See footnote 15, above.

will be to allow for comment on some or all of these documents.

6. Other Comments on the Proposed Delay of the Effective Date

While noting their opposition to many provisions of the final regulation, an association of state and local emergency planning officials recommended that EPA allow the emergency response coordination activities provisions of § 68.93 and the emergency response program provisions of § 68.95 (and particularly paragraph (c)) [21] to go into effect immediately. This association argued that these two requirements are simple, direct, not burdensome, and in the case of § 68.95(c), essentially identical to requirements contained in the Emergency Planning and Community Right-to-Know Act (EPCRA).

Response: EPA disagrees that the emergency response coordination activities provisions of § 68.93 should immediately go into effect. These provisions contain language (*i.e.,* ''Coordination shall include providing to the local emergency planning and response organizations . . . any other information that local emergency planning and response organizations identify as relevant to local emergency response planning'') for which two petitioners (the RMP Coalition and Chemical Safety Advocacy Group) specifically objected, based on their concerns that the rule included no limitations on the information requested to be disclosed or how sensitive information can be protected. In agreeing to convene a proceeding for reconsideration of the final rule, EPA agreed to provide the public with an opportunity to comment on other issues that may benefit from additional comment and response. By finalizing these provisions immediately, EPA would not be allowing the public an additional opportunity to comment on them. Additionally, § 68.93(b) requires coordination to include consulting with local emergency response officials to establish appropriate schedules and plans for field and tabletop exercises required under § 68.96(b). As § 68.96(b) is a new section created in the final rule, EPA cannot finalize § 68.93(b) as currently written without also finalizing § 68.96(b).

Regarding this commenter's recommendation that EPA allow the emergency response program provisions of § 68.95, and particularly paragraph (c), to immediately go into effect, EPA notes that § 68.95(a)(4) also contains a reference to the new exercise requirements of § 68.96, and therefore this provision cannot go into effect without § 68.96. However, § 68.95(c) is already contained in the existing rule. In the Risk Management Program Amendments final rule, EPA simply replaced the phrase ''local emergency planning committee'' with the acronym ''LEPC.'' therefore, this requirement will remain in effect with or without the Risk Management Program Amendments final rule becoming effective.

[21] Section 68.95(c) pertains to coordination of a facility's emergency response plan with the community emergency response plan and providing necessary information to local officials to develop and implement the community response plan.

V. Additional Twenty Month Delay of Effectiveness

EPA is delaying the effective date of the Risk Management Program Amendments final rule until February 19, 2019. Given the degree of complexity with the issues under review, and the likelihood of significant public interest in this reconsideration, we believe the delay we are adopting in this action is adequate and necessary for the reconsideration. While it is possible that we may require less time to complete the reconsideration, we believe delaying the effective date by a full 20 months is reasonable and prudent. This additional delay of the effective date enables EPA time to evaluate the objections raised by the various petitions for reconsideration of the Risk Management Program Amendments, provides a sufficient opportunity for public comment on the reconsideration in accordance with the requirements of CAA section 307(d), gives us an opportunity to evaluate and respond to such comments, and take any possible regulatory actions, which could include proposing and finalizing a rule to revise or rescind the Risk Management Program Amendments, as appropriate. During the reconsideration, EPA may also consider other issues, beyond those raised by petitioners, that may benefit from additional comment, and take further regulatory action.

The EPA recognizes that compliance dates for some provisions in the Risk Management Program Amendments coincided with the rule's effective date, while compliance dates for other provisions would occur in later years, *i.e.,* 2018, 2021, or 2022, depending on the provision. Compliance with all of the rule provisions is not required as long as the rule does not become effective. The EPA did not propose and is not taking any action on any compliance dates at this time, as EPA plans to propose amendments to the compliance dates as necessary when considering future regulatory action.

Section 553(d) of the APA, 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under § 307(d)(1) of the CAA, which states: ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on June 14, 2017. APA section 553(d) provides an exception when the agency finds good cause exists for a period less than 30 days before effectiveness. We find good cause exists to make this rule effective upon publication because a delay of effectiveness can only be put in place prior to a rule becoming effective. Waiting for 30 days for this rule to establish the new effective date of February 19, 2019 at this time would cause the Risk Management Amendments to become temporarily effective on June 19, 2017 (existing effective date). Avoiding this situation alleviates any potential confusion and implementation difficulties that could arise were the Risk Management Program Amendments to go into effect for a 30-day period and then be stayed during reconsideration or modified as a result of the reconsideration process.

The effective date of the Risk Management Program Amendments, published in the **Federal Register** on January 13, 2017 (82 FR 4594), is hereby delayed to February 19, 2019.

VI. Statutory and Executive Orders

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. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This final rule would only delay the effective date of the Risk Management Program Amendments finalized on January 13, 2017 (see 82 FR

4594) and does not contain any information collection activities.

C. 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 final rule would not impose a regulatory burden for small entities because it only delays the effective date of the Risk Management Program Amendments finalized on January 13, 2017 (see 82 FR 4594). We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. 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.

E. 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.

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

This action does not have tribal implications as specified in Executive Order 13175. This final rule would only delay the effective date of the Risk Management Program Amendments finalized on January 13, 2017 (see 82 FR 4594) and does not impose new regulatory requirements. Thus, Executive Order 13175 does not apply to this action.

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

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This final rule only delays the effective date of the Risk Management Program Amendments finalized on January 13, 2017 (see 82 FR 4594) and does not impose any regulatory requirements.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards.

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

The 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. This final rule only delays the effective date of the Risk Management Program Amendments finalized on January 13, 2017 (see 82 FR 4594) and does not impose any regulatory requirements.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Only one major rule provision of the Risk Management Program Amendments has a compliance date that will be extended by delaying the effective date to February 19, 2019. As a result, the costs for that provision are delayed and will not be incurred by the regulated community while the rule is not yet in effect. As discussed below, the costs for this delayed compliance date is small relative to the total costs of the Risk Management Program Amendments and thus, the rule further delaying the effective date is not a major rule.

In the Risk Management Program Amendments, EPA finalized the following compliance dates:

- March 14, 2018—Require compliance with emergency response coordination activities within one year of an effective date of a final rule;
- Provide three years for the owner or operator of a non-responding stationary source to develop an emergency response program in accordance with § 68.95. No specific date was established in the final rule. Instead, the three-year timeframe begins when the owner or operator determines that the facility is subject to the emergency response program requirements of § 68.95;
- March 15, 2021—Comply with new provisions (*i.e.,* third-party compliance audits, root cause analyses as part of incident investigations, STAA, emergency response exercises, and information availability provisions), unless otherwise stated, four years after the original effective date of the final rule; and
- March 14, 2022—Provide regulated sources one additional year (*i.e.,* five years after the original effective date of the final rule) to correct or resubmit RMPs to reflect new and revised data elements.

The compliance dates of March 15, 2021 and March 14, 2022 are not affected by this rule. Therefore, the costs for the majority of the rule provisions are not affected by this rule (*i.e.,* third-party compliance audits, root cause analyses as part of incident investigations, STAA, emergency response exercises, and information availability provisions). We are also delaying costs associated with minor rule provisions that would have become immediately effective on June 19, 2017. However, we did not estimate any costs for these provisions. These provisions include:

- § 68.48 Safety information—revised to change ''Material Safety Data Sheets'' to ''Safety Data Sheets (SDS);''
- § 68.50 Hazard review—revised to clarify that that the hazard review must include findings from incident investigations;
- § 68.54 & 68.71 Training—revised to clarify that employee training requirements apply to supervisors responsible for directing process operations (under 68.54) and supervisors with process operational responsibilities (under 68.71);
- § 68.60 & 68.81 Incident investigation—revised to require incident investigation reports to be completed within 12 months of the incident, unless the implementing agency approves, in writing, an extension of time;
- § 68.65 Process safety information—revised to require that process safety information be kept up-to-date;

○ Also, changed the note to paragraph (b): To replace ''Material Safety Data Sheets'' with ''Safety Data Sheets (SDS);'' and

• § 68.67 Process hazard analysis—revised to require that the PHA must now address the findings from all incident investigations required under § 68.81, as well as any other potential failure scenarios.

The only major rule provision that would be affected by this rule (because its March 14, 2018 compliance date is before the delayed effective date of this rule) is the emergency response coordination provision, which has an estimated annualized cost of $16 M.[22] [23] Therefore, based on the costs of the provisions that would be affected by this action, EPA has concluded that this action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 68

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 9, 2017.

E. Scott Pruitt,

Administrator.

[FR Doc. 2017–12340 Filed 6–13–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0255; FRL–9961–95]

Spirotetramat; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of spirotetramat in or on multiple commodities which are identified and discussed later in this document. In addition, this regulation removes several previously established tolerances that are superseded by this final rule. Interregional Research Project Number 4 (IR–4) and Bayer CropScience, requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 14, 2017. Objections and requests for hearings must be received on or before August 14, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0255, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0255 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 14, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0255, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of Wednesday, June 22, 2016 (81 FR 40594) (FRL–9947–32) and Monday, August 29, 2016 (81 FR 59165) (FRL–9950–22), EPA issued documents pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3),

[22] See EPA, Regulatory Impact Analysis, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7), December 16, 2016, pp 71, Docket ID No. EPA–HQ–OEM–2015–0725.

[23] The new compliance date for the emergency response coordination provision will be February 19, 2019, unless we propose and finalize a revised compliance date in conjunction with future revisions to the Risk Management Program Amendments.

announcing the filing of pesticide petitions (PPs) by IR–4 (PP 6E8467); and Bayer CropScience (PP 6F8461). These petitions request that 40 CFR 180.641 be amended by establishing tolerances for residues of the insecticide spirotetramat, (*cis*-3-(2,5-dimethylphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl-ethyl carbonate) and its metabolites *cis*-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]dec-3-en-2-one, *cis*-3-(2,5-dimethylphenyl)-3-hydroxy-8-methoxy-1-azaspiro[4.5]decane-2,4-dione, *cis*-3-(2,5-dimethylphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl beta-D-glucopyranoside, and *cis*-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]decan-2-one, calculated as the stoichiometric equivalent of spirotetramat, in or on several commodities as follows:

Pesticide petition 6E8467 submitted by IR–4 Project Headquarters, 500 College Road East, Suite 201 W., Princeton, NJ 08540 requests tolerances for carrot, roots at 0.15 parts per million (ppm); fruit, stone, group 12–12 at 4.5 ppm; and nut, tree, group 14–12 at 0.25 ppm.

Pesticide petition 6F8461 submitted by Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709 requests tolerances on sugar beet, molasses at 0.20 ppm and sugar beet, root at 0.15 ppm.

Summaries of the petitions prepared by the registrant, Bayer CropScience, are available in the docket, *http://www.regulations.gov* under document ID EPA–HQ–OPP–2016–0255. One comment was received in response to the notices of filings. EPA's response to the comment is discussed in Unit IV.C.

Based upon review of the data supporting the petitions, EPA has revised the tolerance levels for several proposed commodities and corrected several commodity listings. The reason for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

The target organs of toxicity following subchronic and chronic oral exposures to spirotetramat were different in rats and dogs. The thyroid and thymus glands were the target organs identified in subchronic and chronic toxicity studies in dogs while the testes were the target organs identified in rats. The dog was the most sensitive species, and in both rats and dogs, males were more sensitive than females. The thyroid effects in the dog consisted of lower circulating levels of thyroid hormones (T3 and/or T4) along with a reduction in follicle size, a possible indication of reduced amount of colloid. In all dog studies, thymus effects were observed (reduced size, atrophy). In the one-year study, this was described microscopically as involution.

In rats, reported testicular effects consisted of abnormal spermatozoa and hypospermia in the epididymis, decreased testicular weights, and testicular degenerative vacuolation. An investigative subchronic study where rats were dosed with a primary enol metabolite of spirotetramat reproduced the same testicular effects as the parent chemical, suggesting that this metabolite is, at minimum, a primary contributor to the observed male reproductive toxicity. Consistent with this notion, orally administered spirotetramat was demonstrated in rats to be extensively metabolized, and males were noted to achieve much higher systemic exposures than their female counterparts, which helps explain the higher sensitivity of males. Other effects reported in a rat chronic toxicity study were associated with kidney effects consisting of decreased organ weight and tubular dilatation.

In one- and two-generation rat reproductive toxicity studies, male reproductive toxicity (abnormal sperm cells and reproductive performance) similar to that reported in subchronic toxicity studies with adult rats was reported in the first generation (F_1) males at relatively high dose levels. In all cases, a well-defined no-observed adverse-effect level (NOAEL) was established.

There was evidence of increased qualitative susceptibility in the rat developmental study with reduced fetal weight and increased incidences of malformations and skeletal deviations observed at the limit dose, while maternal effects at this dose consisted of only body-weight decrements. There was no evidence of increased quantitative or qualitative susceptibility to offspring following pre- or post-natal exposure to spirotetramat in the rabbit developmental or two-generation reproduction studies.

The only evidence of neurotoxicity in the rat acute neurotoxicity study was based on decreased motor and locomotor activity, which occurred only at relatively high dose levels. The rat subchronic neurotoxicity (SCN) study does not indicate a concern for neurotoxicity, even at relatively high dose levels. The results of an immunotoxicity study in rats do not indicate any functional deficits in immune function.

There is no evidence of carcinogenicity in chronic toxicity/carcinogenicity studies performed in rats and mice. Spirotetramat has been classified as ''not likely to be carcinogenic to humans'' based on lack of evidence for carcinogenicity in rodent studies. Spirotetramat was also negative for mutagenicity and clastogenicity in *in vivo* and *in vitro* assays.

Specific information on the studies received and the nature of the adverse effects caused by spirotetramat as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document: ''Spirotetramat. Human Health Risk Assessment for the Tolerance Petition for Residues in/on Sugar Beet and Carrot and Crop Group Conversions for

Tree Nut Group 14–12 and Fruit, Stone, Group 12–12.'' at pages 25–30 in docket ID number EPA–HQ–OPP–2016–0255.

B. Toxicological Points of Departure/ Levels of Concern

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

A summary of the toxicological endpoints for spirotetramat used for human risk assessment is discussed in Unit III. B. Toxicological Points of Departure/Levels of Concern of the final rule published in the **Federal Register** of Tuesday, October 25, 2016 (81 FR 73342) (FRL–89951–80).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to spirotetramat, EPA considered exposure under the petitioned-for tolerances as well as all existing spirotetramat tolerances in 40 CFR 180.641. EPA assessed dietary exposures from spirotetramat in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for spirotetramat.

In estimating acute dietary exposure, EPA used food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA) from 2003 through 2008. As to residue levels in food, EPA assumed tolerance-level residues, 100 percent crop treated (PCT) information for all commodities and Dietary Exposure Evaluation Model (DEEM) 7.81 default processing factors where available.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA's 2003–2008 NHANES/ WWEIA. As to residue levels in food, EPA used 100 PCT, average field trial residues for some commodities, and tolerance-level residues for the remaining commodities.

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

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

The Agency did not use percent crop treated estimates.

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

Based on the Tier 1 Rice Model and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of spirotetramat and its metabolites and degradates of concern for acute exposures are estimated to be 395 parts per billion (ppb) for surface water and 7.99 ppb for ground water.

Chronic exposures for non-cancer assessments are estimated to be 395 ppb for surface water and 5.36 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For both acute and chronic dietary risk assessment, the water concentration value of 395 ppb was used to assess the contribution to drinking water.

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

Spirotetramat is currently registered for the following uses that could result in residential exposures: Citrus trees grown in residential areas and turf grass including sod farm and golf course turf only. There is the potential for post-application dermal exposure from both residential citrus tree and golf course uses. The golf course use could result in potential post-application dermal exposure; however, there is no dermal hazard and therefore, quantification of dermal risk is not necessary. For the residential citrus tree use, because the product is sold in bulk packaging for agricultural uses and the label requires that handlers wear specific clothing (*e.g.,* long-sleeve shirt/long pants) and the use of personal-protective equipment (*e.g.,* gloves), based on current Agency policy, EPA has made the assumption that this product is not meant for homeowner use, and therefore, there is no need to conduct a quantitative residential handler assessment.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There is no evidence of quantitative susceptibility of offspring following pre- or postnatal exposure to spirotetramat. There is evidence of qualitative susceptibility in the rat developmental study, where developmental effects, including reduced fetal weight and increased incidences of malformations and skeletal deviations, were observed in the presence of body weight decrements in maternal animals. However, concern is low since effects were only seen at the limit dose and selected endpoints are protective of the observed effects.

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

i. The toxicity database for spirotetramat is complete.

ii. Although spirotetramat was shown to elicit neurotoxic response in the acute neurotoxicity study; however, concern is low since the effects are well-characterized with clearly established NOAEL/LOAEL values, the selected endpoints are protective of the observed neurotoxic effect, there are no neurotoxic effects seen in the subchronic neurotoxicity study, and the existing toxicological database indicates that spirotetramat is not a neurotoxic chemical.

iii. There is no evidence of quantitative susceptibility of offspring following pre- or postnatal exposure. There is evidence of qualitative susceptibility in the rat developmental study; however, there is no residual uncertainty concerning these effects due to the clear NOAEL/LOAELs in the study for these effects. Moreover, concern for these effects is low since effects were only seen at the limit dose, effects were seen in the presence of maternal toxicity, and selected endpoints are protective of the observed effects.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary food and drinking water exposure assessment utilizes tolerance-level residues and 100 PCT information for all commodities. The chronic dietary food and drinking water exposure assessment utilizes average field trial residues for some commodities, tolerance-level residues for the remaining commodities, and 100 PCT. The chronic assessment is somewhat refined; however, since it is based on reliable data, it will not underestimate exposure and risk. There are no quantifiable potential exposure/risks from residential citrus tree and golf course uses. The drinking water assessments provide conservative, health-protective, high-end estimates of water concentrations that will not likely be exceeded. These assessments will not underestimate the exposure and risks posed by spirotetramat.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to spirotetramat will occupy 16% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to spirotetramat from food and water will utilize 77% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure.

3. *Short- and Intermediate-term risks.* Short- and intermediate-term aggregate exposures take into account short- and intermediate-term residential exposures plus chronic exposure to food and water (considered to be a background exposure level). A short- and intermediate-term inhalation adverse effect was identified; however, spirotetramat is not registered for any use patterns that would result in either short- or intermediate-term inhalation residential exposure. In a dermal toxicity study, no evidence of dermal hazard was found; therefore, dermal risk was not included in the aggregate assessment. Short- and intermediate-term aggregate risks are assessed based on short- and intermediate-term residential exposures plus chronic dietary exposure. Because there is no short- or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risks for spirotetramat.

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

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high-performance liquid chromatography with tandem mass spectrometry (HPLC–MS/MS)) is available to enforce the tolerance expression.

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

B. International Residue Limits

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

The Codex has not established a MRL for spirotetramat.

C. Response to Comments

One comment was received from an anonymous source requesting that the Agency deny IR–4's petition for use of spirotetramat on all food items claiming it is a toxic chemical and its use would result in harm to humans.

The Agency's Response: The Agency recognizes that some individuals believe that certain pesticides are ''toxic chemicals'' that should not be permitted in our food; however, the commenter provided no information demonstrating toxicity of spirotetramat or that EPA could use to evaluate the safety of the pesticide. The existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. When new or amended tolerances are requested for residues of a pesticide in food or feed, the Agency, as is required by Section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), estimates the risk of the potential exposure to these residues. The Agency has concluded after this risk assessment, which includes the consideration of long-term animal studies with spirotetramat, that there is a reasonable certainty that no harm will result from aggregate human exposure to spirotetramat and that, accordingly, the use of spirotetramat on petitioned-for food commodities is ''safe.''

D. Revisions to Petitioned-For Tolerances

Based on available residue data, EPA is establishing tolerance level on sugar beet molasses at 0.30 ppm instead of 0.20 ppm, to cover anticipated residues. In addition, EPA corrected the commodity terminology for ''sugar beet root'' and ''sugar beet molasses'' to ''beet, sugar, roots'' and ''beet, sugar, molasses,'' respectively, in order to conform to terms used in the Agency's Food and Feed Commodity Vocabulary.

V. Conclusion

Therefore, tolerances are established for residues of spirotetramat, (*cis*-3-(2,5-dimethylphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl-ethyl carbonate) and its metabolites *cis*-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]dec-3-en-2-one, *cis*-3-(2,5-dimethylphenyl)-3-hydroxy-8-methoxy-1-azaspiro[4.5]decane-2,4-dione, *cis*-3-(2,5-dimethylphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl beta-D-glucopyranoside, and *cis*-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]decan-2-one, calculated as the stoichiometric equivalent of spirotetramat, in or on beet, sugar, molasses at 0.30 ppm; beet, sugar, roots at 0.15 ppm; carrot, roots at 0.15 ppm; fruit, stone, group 12–12 at 4.5 ppm; and nut, tree, group 14–12 at 0.25 ppm. In addition, EPA is revoking the existing tolerances for fruit, stone, group 12 and nut, tree, group 14 as they are superseded by the new tolerances for groups 12–12 and 14–12 established under this final rule.

VI. Statutory and Executive Order Reviews

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

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 8, 2017.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.641, in the table in paragraph (a)(1):
■ i. Add alphabetically the entries: ''Beet, sugar, molasses''; ''Beet, sugar, roots''; ''Carrot, roots''; ''Fruit, stone, group 12–12''; and ''Nut, tree, group 14–12''; and
■ ii. Remove entries for ''Fruit, stone, group 12'' and ''Nut, tree, group 14''.

The additions read as follows:

§ 180.641 Spirotetramat; tolerances for residues.

(a) * * *
(1) * * *

Commodity	Parts per million
* * * * *	
Beet, sugar, molasses	0.30
Beet, sugar, roots	0.15
* * * * *	
Carrot, roots	0.15
* * * * *	
Fruit, stone, group 12–12	4.5
* * * * *	
Nut, tree, group 14–12	0.25
* * * * *	

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[FR Doc. 2017–12348 Filed 6–13–17; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0263; FRL–9961–80]

Isofetamid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of isofetamid in or on multiple commodities which are identified and discussed later in this document. ISK Biosciences Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). The regulation also removes the existing time-limited tolerances for residues on ''bushberry subgroup 13–07B'' and ''caneberry subgroup 13–07A'' because they are no longer needed as a result of this action.

DATES: This regulation is effective June 14, 2017. Objections and requests for hearings must be received on or before August 14, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0263, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0263 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 14, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0263, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about

dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 7, 2017 (82 FR 9555) (FRL–9956–86), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6F8457) by ISK Biosciences Corporation, 7470 Auburn Rd., Suite A, Concord, OH 44077. The petition requested that 40 CFR 180.681 be amended by establishing tolerances for residues of the fungicide isofetamid, *N*-[1,1-dimethyl-2-[2-methyl-4-(1-methylethoxy)phenyl]-2-oxoethyl]-3-methyl-2-thiophenecarboxamide, in or on caneberry subgroup 13–07A at 3.0 parts per million (ppm); apple, wet pomace, at 2.0 ppm; bushberry, subgroup 13–07B at 6.0 ppm; cattle, fat at 0.01 ppm; cattle, meat byproducts at 0.01 ppm; cherry subgroup 12–12A at 5.0 ppm; fruit, pome, group 11–10 at 0.6 ppm; fruit, small vine climbing, except grape, subgroup 13–7E at 9.0 ppm; goat, fat at 0.01 ppm; goat, meat byproducts at 0.01 ppm; horse, fat at 0.01 ppm; horse, meat byproducts at 0.01 ppm; pea and bean, dried shelled, except soybean, subgroup 6C, except cowpea and field pea at 0.05 ppm; pea and bean, succulent shelled, subgroup 6B, except cowpea at 0.04 ppm; peach subgroup 12–12B at 3.0 ppm; plum, prune, dried at 3.5 ppm; plum subgroup 12–12C at 0.8 ppm; sheep, fat at 0.01 ppm; sheep, meat byproducts at 0.01 ppm; and vegetable, legume, edible podded, subgroup 6A at 1.5 ppm. That document referenced a summary of the petition prepared by ISK Biosciences Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised some of the proposed tolerances; determined that tolerances for residues in livestock commodities are not required; and corrected some of the commodity definitions. The reason for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The toxicology database is complete for isofetamid. In repeated dose studies, the liver was the primary target organ in the rat, mouse, and dog, as indicated by increased liver weights, changes in the clinical chemistry values, and liver hypertrophy. A second target organ was the thyroid in the rat and dog, as indicated by changes in thyroid weights and histopathology. Adrenal weight changes were observed in the subchronic rat and dog studies. In the rat and dog, the dose levels where toxicity was observed were similar or higher in the chronic studies compared with the respective subchronic studies, showing an absence of progression of liver toxicity with time. There was no evidence of carcinogenicity in the rat or mouse cancer studies; the mutagenicity battery was negative. There are no genotoxicity, neurotoxicity, or immunotoxicity concerns observed in the available toxicity studies. Developmental toxicity was not observed in the rat or rabbit, and offspring effects such as decreased body weight were seen only in the presence of parental toxicity in the multi-generation rat study. Isofetamid is classified as ''Not Likely to be Carcinogenic to Humans'' based on the absence of increased tumor incidence in acceptable/guideline carcinogenicity studies in rats and mice. Isofetamid is not acutely toxic; it is classified as Toxicity Category III for acute oral and dermal exposure, and Toxicity Category IV for inhalation exposure. Furthermore, it is not irritating to the eye or skin, and it is not a dermal sensitizer.

Specific information on the studies received and the nature of the adverse effects caused by isofetamid as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are can be found at *http://www.regulations.gov* in document *Isofetamid. Aggregate Human Health Risk Assessment for the Proposed New Agricultural Uses on Bushberry, Subgroup 13–07B; Caneberry, Subgroup 13–07A; Cherry, Subgroup 12–12A; Dried Shelled Pea and Bean, Except Soybean, Subgroup 6C; Edible-Podded Legume Vegetables, Subgroup 6A; Peach, Subgroup 12–12B; Plum, Subgroup 12–12C; Pome Fruit, Group 11–10; Small Vine Climbing Fruit, Except Grape, Subgroup 13–07E; Succulent Shelled Pea and Bean, Subgroup 6B; as well as Livestock Commodities; in Addition to Uses on Ornamental Plants (including Residential Use Sites).* pages 12–18 in docket ID number EPA–HQ–OPP–2016–0263.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some

degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for isofetamid used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of July 30, 2015 (80 FR 45440) (FRL–9923–86).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to isofetamid, EPA considered exposure under the petitioned-for tolerances as well as all existing isofetamid tolerances in 40 CFR 180.681. EPA assessed dietary exposures from isofetamid in food as follows:

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

ii. *Chronic exposure.* An unrefined chronic (food and drinking water) dietary assessment was conducted for all registered and proposed food uses of isofetamid using the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 3.16. This software uses 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). The chronic dietary (food and drinking water) exposure assessment for isofetamid incorporated existing tolerance-level residues, Agency-recommended tolerance-level residues for proposed tolerances, DEEM default processing factors, and 100 PCT (percent crop treated). Some tolerance levels were adjusted to include residues of the metabolite, GPTC (a residue of concern for risk assessment). DEEM default processing factors were used for dried apples, apple juice, dried pear, cherry juice, dried apricot, dried peach, plum, prune juice, cranberry juice, and grape juice. The EDWC of 110 microgram/Liter (µg/L) was incorporated directly into the dietary assessment.

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

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

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

Based on the Pesticide Flooded Application Model and the Pesticide Root Zone Model Ground Water (PRZM GW) the estimated drinking water concentrations (EDWCs) of isofetamid for chronic exposures for non-cancer assessments are estimated to be 110 parts per billion (ppb) for surface water and 43 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration value of 110 ppb was used to assess the contribution from drinking water.

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

Isofetamid is currently registered for the following uses that could result in residential exposures: Turfgrass including golf courses, residential lawns, and recreational turfgrass. It is currently under review for registering use on ornamental plants. The proposed ornamental use is not intended for homeowner use and therefore a quantitative residential handler assessment was not conducted. Additionally, post-application exposures for adults and children are expected to be negligible. However, the existing turf use may result in short- and intermediate-term exposures. Residential exposure may occur by the dermal and incidental oral routes of exposures following the application of isofetamid on residential turf. However, since dermal hazard has not been identified for isofetamid, the only exposure scenario quantitatively assessed is for post-application incidental oral (for children 1 to <2 years old). These exposures have been assessed with current policies, which include the Agency's 2012 Residential Standard Operating Procedures (*http://www.epa.gov/pesticides/science/residential-exposure-sop.html)* along with policy changes for body weight assumptions.

Even though a previous risk assessment identified residential handler risk estimates for use in aggregate assessment, based on current policy and that isofetamid products are intended for sale/use to/by professional applicators, residential handler exposure assessments for turf are no longer applicable to the isofetamid aggregate risk assessment. Therefore, the aggregate assessment for this action only includes a risk contribution from residential post-application incidental oral exposure for children 1 to <2 years old.

There is the potential for post-application exposure for individuals as a result of being in an environment that has been previously treated with isofetamid such as residential ornamental lawns. Since dermal hazard has not been identified for isofetamid, a quantitative assessment for dermal exposure is not necessary and the only exposure scenarios quantitatively assessed are for children 1 to <2 years old who may experience short-term incidental oral exposure to isofetamid from treated turf. Intermediate-term incidental oral post-application exposures are possible (*i.e.,* from soil ingestion due to the persistence of isofetamid); however, the short-term incidental oral exposures are protective of the possible intermediate-term incidental oral exposures because the POD for both durations is the same. Post-application inhalation exposure is expected to be negligible for the proposed residential uses.

The post-application incidental oral MOE values were calculated based on the scenario of liquid application of isofetamid to turf. Post-application risk estimates for all incidental oral scenarios are not of concern (MOEs range from 5,900 to 4,000,000). The incidental oral scenarios (*i.e.,* hand-to-mouth and object-to-mouth) should be considered inter-related and it is likely that they occur interspersed amongst

each other across time. However, combining these scenarios would be overly-conservative because of the conservative nature of each individual assessment. Incidental oral risk estimates are highly conservative because the short- and intermediate-term incidental oral POD is based on a 90-day exposure duration which represents daily exposure for 90 days. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

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

EPA has not found isofetamid to share a common mechanism of toxicity with any other substances, and isofetamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that isofetamid does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There is no evidence of developmental toxicity or reproductive susceptibility, and there are no residual uncertainties concerning pre- or post-natal toxicity or exposure.

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

i. The toxicity database for isofetamid is complete.

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

iii. There is no evidence that isofetamid results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to isofetamid in drinking water. EPA used similarly conservative assumptions to assess post application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by isofetamid.

E. Aggregate Risks and Determination of Safety

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

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

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to isofetamid from food and water will utilize 4.0% of the cPAD for children (1–2 years old), the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of isofetamid is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Isofetamid is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to isofetamid.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOE of 1,600 for children (1–2 years old). Because EPA's level of concern for isofetamid is a MOE of 100 or below, this MOE is not of concern.

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

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

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology liquid chromatography with tandem mass spectrometry (LC–MS/MS) method is available to enforce the tolerance expression. Multiresidue methods testing data have been submitted for isofetamid and GPTC. The data indicate that multiresidue methods are not suitable for analysis of isofetamid and GPTC, so the multiresidue methods cannot serve as enforcement methods. The multiresidue data have been forwarded to the Food and Drug Administration (FDA).

B. International Residue Limits

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

The Codex has not established MRLs for isofetamid. There are no Canadian, Codex, or Mexican maximum residue limits (MRLs) for isofetamid in/on the commodities included in this petition.

C. Revisions to Petitioned-For Tolerances

All tolerance levels are based upon the Organization for Economic Co-operation and Development's (OECD) tolerance calculation procedures. Thus, the tolerance levels established in this notice for isofetamid in/on bushberry, subgroup 13–07B; cherry, subgroup 12–12A; plum, prune, dried; dried shelled pea and bean, except soybean, subgroup 6C; and succulent shelled pea and bean, subgroup 6B are lower than those requested by the petitioner. The tolerance levels established in this notice for caneberry, subgroup 13–07A and fruit, small vine climbing, except grape, subgroup 13–07E are higher than those requested by the petitioner based on the OECD calculation procedures.

Additionally, the Agency has determined that tolerances requested for residues in livestock commodities are not required. These tolerances fall under 40 CFR 180.6(a)(3) regarding secondary residues in livestock commodities, *i.e.,* it is not possible to establish with certainty whether finite residues will be incurred, but there is no reasonable expectation of finite residues.

The following commodity definitions have been corrected: Bushberry subgroup 13–07B; fruit, small vine climbing, except grape, subgroup 13–07E; pea and bean, dried shelled, except soybean, subgroup 6C; and pea and bean, succulent shelled, subgroup 6B.

V. Conclusion

Therefore, tolerances are established for residues of isofetamid, in or on apple, wet pomace, at 2.0 parts per million (ppm); bushberry subgroup 13–07B at 5.0 ppm; caneberry subgroup 13–07A at 4.0 ppm; cherry subgroup 12–12A at 4.0 ppm; fruit, pome, group 11–10 at 0.60 ppm; fruit, small vine climbing, except grape, subgroup 13–07E at 10.0 ppm; pea and bean, dried shelled, except soybean, subgroup 6C, at 0.040 ppm; pea and bean, succulent shelled, subgroup 6B, at 0.030 ppm; peach subgroup 12–12B at 3.0 ppm; plum, prune, dried at 1.50 ppm; plum subgroup 12–12C at 0.80 ppm; and vegetable, legume, edible podded, subgroup 6A at 1.50 ppm. Additionally, the existing time-limited tolerances are being removed for both Caneberry subgroup 13–07A at 4.0 ppm, and for Bushberry subgroup 13–07B at 5.0 ppm.

VI. Statutory and Executive Order Reviews

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

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: May 4, 2017.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.681 is amended as follows:

■ a. In the table in paragraph (a) alphabetically add the following commodities: ''Apple, wet pomace''; ''Bushberry subgroup 13–07B''; ''Caneberry subgroup 13–07A''; ''Cherry subgroup 12–12A''; ''Fruit, pome, group 11–10''; ''Fruit, small vine climbing, except grape, subgroup 13–07E''; ''Pea and bean, dried shelled, except soybean, subgroup 6C''; ''Pea and bean, succulent shelled, subgroup 6B''; ''Peach subgroup 12–12B''; ''Plum, Prune, Dried''; ''Plum subgroup 12–12C''; ''Vegetable, legume, edible podded, subgroup 6A''.

■ b. Paragraph (b) is revised.

The additions and revision read as follows:

§ 180.681 Isofetamid; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Apple, wet pomace	2.0
Bushberry subgroup 13–07B	5.0
Caneberry subgroup 13–07A	4.0
* * * * *	
Cherry subgroup 12–12A	4.0
* * * * *	
Fruit, pome, group 11–10	0.60
* * * * *	
Fruit, small vine climbing, except grape, subgroup 13–07E	10.0
* * * * *	
Pea and bean, dried shelled, except soybean, subgroup 6C	0.040
Pea and bean, succulent shelled, subgroup 6B	0.030
Peach subgroup 12–12B	3.0
Plum, Prune, Dried	1.50
Plum subgroup 12–12C	0.80
* * * * *	
Vegetable, legume, edible podded, subgroup 6A	1.50

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

[FR Doc. 2017–12346 Filed 6–13–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 441

[EPA–HQ–OW–2014–0693; FRL–9957–10–OW]

RIN 2040–AF26

Effluent Limitations Guidelines and Standards for the Dental Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating technology-based pretreatment standards under the Clean Water Act to reduce discharges of mercury from dental offices into municipal sewage treatment plants known as publicly owned treatment works (POTWs). This final rule requires dental offices to use amalgam separators and two best management practices recommended by the American Dental Association (ADA). This final rule includes a provision to significantly reduce and streamline the oversight and reporting requirements in EPA's General Pretreatment Regulations that would otherwise apply as a result of this rulemaking. EPA expects compliance with this final rule will annually reduce the discharge of mercury by 5.1 tons as well as 5.3 tons of other metals found in waste dental amalgam to POTWs.

DATES: The final rule is effective on July 14, 2017. The compliance date, meaning the date that existing sources subject to the rule must comply with the standards in this rule is July 14, 2020. After the effective date of the rule, new sources subject to this rule must comply immediately with the standards in this rule. In accordance with 40 CFR part 23, this regulation shall be considered issued for purposes of judicial review at 1 p.m. Eastern time on June 28, 2017. Under section 509(b)(1) of the CWA, judicial review of this regulation can be had only by filing a petition for review in the U.S. Court of Appeals within 120 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2), the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2014–0693. All documents in the docket are listed on the *https://www.regulations.gov* Web site. 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. This material can be viewed at the Water Docket in the EPA Docket Center, EPA/DC, EPA West William Jefferson Clinton Bldg., Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426. Publicly available docket materials are available electronically through *http://www.regulations.gov.* A detailed record index, organized by subject, is available on EPA's Web site at *https://www.epa.gov/eg/dental-effluent-guidelines* .

FOR FURTHER INFORMATION CONTACT: For more information, see EPA's Web site: *https://www.epa.gov/eg/dental-effluent-guidelines.* For technical information, contact Ms. Karen Milam, Engineering and Analysis Division (4303T), Office of Water, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone: 202–566–1915; email: *milam.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Regulated Entities and Supporting Information

A. Regulated Entities

Entities potentially regulated by this action include:

Category	Example of regulated entity	North American Industry Classification System (NAICS) Code
Industry	A general dentistry practice or large dental facility	621210

This section is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated or affected by this final rule. Other types of entities that do not meet the above criteria could also be regulated. To determine whether your facility would be regulated by this final rule, you should carefully examine the applicability criteria listed in § 441.10 and the definitions in § 441.20 of this final rule and detailed further in Section VI of this preamble. If you still have questions regarding the applicability of this final rule to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Supporting Information

This final rule is supported by a number of documents including the Technical and Economic Development Document for the Final Effluent Limitations Guidelines and Standards for the Dental Category (TEDD), Document No. EPA–821–R–16–005. The TEDD and additional records are available in the public record for this final rule and on EPA's Web site at *https://www.epa.gov/eg/dental-effluent-guidelines.*

II. Legal Authority

EPA promulgates this regulation under the authorities of sections 101, 301, 304, 306, 307, 308, and 501 of the CWA, 33 U.S.C. 1251, 1311, 1314, 1316, 1317, 1318, 1342 and 1361 and pursuant to the Pollution Prevention Act of 1990, 42 U.S.C. 13101 *et seq.*

III. Executive Summary

The purpose of this final rule is to set a uniform national standard that will greatly reduce the discharge of mercury-containing dental amalgam to municipal sewage treatment plants, known as POTWs, in the United States. Mercury is a potent neurotoxin that bioaccumulates in fish and shellfish, and mercury pollution is widespread and a global concern that originates from many diverse sources such as air deposition from municipal and industrial incinerators and combustion of fossil fuels. Across the U.S., 12 states and at least 18 localities have established mandatory programs to reduce discharges of mercury to POTWs. As a result of these efforts, along with outreach from the ADA to promote voluntary actions to reduce such discharges, approximately 40 percent of the dentists subject to this rule already have installed amalgam separators. Amalgam separators greatly reduce the discharge of mercury-containing amalgam to POTWs. Amalgam separators are a practical, affordable and readily available technology for capturing mercury at dental offices. The mercury collected by these separators can be recycled. This rule will ensure that mercury discharges to POTWs are effectively controlled at dental offices that discharge wastewater to POTWs.

Many studies have been conducted in an attempt to identify the sources of mercury entering POTWs. According to the 2002 Mercury Source Control and Pollution Prevention Program Evaluation Final Report (DCN DA00006) prepared by the Association of Metropolitan Sewerage Agencies (AMSA), dental offices are the main source of mercury discharges to POTWs. A study funded by the ADA published in 2005 estimated that dental offices contributed 50 percent of mercury entering POTWs (DCN DA00163). Mercury is discharged in the form of waste dental amalgam when dentists remove old amalgam fillings from cavities, and from excess amalgam

waste when a dentist places a new amalgam filling.

While dental offices are not a major contributor of mercury to the environment generally, dental offices are the main source of mercury discharges to POTWs. EPA estimates that across the United States 5.1 tons of mercury and an additional 5.3 tons of other metals found in waste dental amalgam are collectively discharged into POTWs annually. Mercury entering POTWs frequently partitions into the sludge, the solid material that remains after wastewater is treated. Mercury from waste amalgam therefore can make its way into the environment from the POTW through the incineration, landfilling, or land application of sludge or through surface water discharge. Once released into the aquatic environment, certain bacteria can change mercury into methylmercury, a highly toxic form of mercury that bioaccumulates in fish and shellfish. In the U.S., consumption of fish and shellfish is the main source of methylmercury exposure to humans. Removing mercury when it is in a concentrated and easy to manage form in dental amalgam, before it becomes diluted and difficult and costly to remove, is a common sense step to prevent mercury from being released into the environment where it can become a hazard to humans.

The ADA, which supported removal and recycling of mercury from wastewater discharged to POTWs in its comments on the 2014 proposed rule (See DCN EPA–HQ–OW–2014–0693–0434), developed best management practices (BMPs) to facilitate this goal and shared its recommendations widely with the dental community (DCN DA00165). The ADA's voluntary amalgam waste handling and disposal practices include the use of amalgam separators to reduce mercury discharges. In addition, some states and localities have implemented mandatory programs to reduce dental mercury discharges that include the use of amalgam separators.

EPA has concluded that requiring dental offices to remove mercury through relatively low-cost and readily available amalgam separators and BMPs makes sense. Capturing mercury-laden waste where it is created prevents it from being released into the environment. This final rule controls mercury discharges to POTWs by establishing a performance standard for amalgam process wastewater based on the use of amalgam separator technology. The rule also requires dental dischargers to adopt two BMPs, one which prohibits the discharge of waste (''or scrap''), and the other which prohibits the use of line cleaners that may lead to the dissolution of solid mercury when cleaning chair-side traps and vacuum lines.

In addition, the rule minimizes the administrative burden on dental offices subject to the rule, as well as on federal, state, and local regulatory authorities responsible for oversight and enforcement of the new standard. Administrative burden was a concern of many of the commenters on the 2014 proposed rule and EPA has greatly reduced that burden through streamlining the administrative requirements in this final rule.

When EPA establishes categorical pretreatment requirements, it triggers additional oversight and reporting requirements in EPA's General Pretreatment Regulations. The General Pretreatment Regulations specify that Control Authorities (which are often the state or POTW) are responsible for administering and enforcing pretreatment standards, including receiving and reviewing compliance reports. While other industries subject to categorical pretreatment standards typically consist of tens to hundreds of facilities, the dental industry consists of approximately 130,000 offices. Application of the default General Pretreatment Regulation oversight and reporting requirements to such a large number of facilities would be much more challenging. Further, dental office discharges differ from other industries for which EPA has established categorical pretreatment standards. Both the volume of wastewater discharged and the quantity of pollutants in the discharge on a per facility basis are significantly less than other industries for which EPA has established categorical pretreatment standards. Accordingly, this final rule exempts dental offices from the General Pretreatment Regulations' oversight and reporting requirements associated with categorical pretreatment standards, reflecting EPA's recognition that the otherwise-applicable regulatory framework for categorical dischargers would be unlikely to have a significant positive impact on overall compliance with the rule across the dental industry, while imposing a substantial burden on state and local regulating authorities.

In order to simplify implementation and compliance for the dental offices and the regulating authorities, the final rule establishes that dental dischargers are not Significant Industrial Users (SIUs) as defined in 40 CFR part 403, and are not Categorical Industrial Users (CIUs) or ''industrial users subject to categorical pretreatment standards'' as those terms and variations are used in the General Pretreatment Regulations, unless designated such by the Control Authority. While this rule establishes pretreatment standards that require dental offices to reduce dental amalgam discharges, the rule does not require Control Authorities to implement the traditional suite of oversight requirements in the General Pretreatment Regulations that become applicable upon the promulgation of categorical pretreatment standards for an industrial category. This significantly reduces the reporting requirements for dental dischargers that would otherwise apply by instead requiring them to demonstrate compliance with the performance standard and BMPs through a one-time compliance report to their Control Authority. This regulatory approach also eliminates the additional oversight requirements for Control Authorities that are typically associated with SIUs, such as permitting and annual inspections of individual dental offices. It also eliminates additional reporting requirements for the Control Authorities typically associated with CIUs, such as identification of CIUs in their annual pretreatment reports. At the same time, the final rule recognizes the Control Authority's discretionary authority to treat a dental discharger as an SIU and/or CIU if, in the Control Authority's judgement, it is necessary.

EPA estimated the annual costs associated with this rule. EPA's analysis reflects that many dental offices have already taken steps to reduce dental amalgam discharges by discontinuing the use of dental amalgam, adopting the ADA's voluntary best practices, or by meeting existing mandatory state or local requirements. On a national basis, EPA estimates that approximately 40 percent of dental offices subject to this final rule already use amalgam separators (DCN DA00456). Of the remaining 60 percent of dental offices that do not have amalgam separators and that are subject to this final rule, EPA estimates that 20 percent do not place or remove dental amalgam (DCN DA00161). These dentists that do not place or remove dental amalgam—which correspond to 12 percent of the dental offices subject to this final rule—will incur little to no costs as a result of the rule. EPA estimates the remainder (representing 48 percent of the dental offices subject to this final rule) will incur an approximate average annual cost of $800 per office. The total annual cost of this final rule is projected to be $59–$61 million.

This final rule will produce human health and ecological benefits by reducing the estimated annual

nationwide POTW discharge of dental mercury to surface water from 1,003 pounds to 11 pounds. Studies show that decreased point-source discharges of mercury to surface water have resulted in lower methylmercury concentrations in fish, and that such reductions can result in quantifiable economic benefits from improved human health and ecological conditions (DCN DA00148). While not quantified, as noted above, this rule will also reduce mercury releases to the environment associated with the incineration, landfilling, or land application of POTW sludges. Instead, EPA expects all of the collected amalgam will be recycled, rather than released back into the environment.

IV. Background

A. Legal Framework

1. Clean Water Act

Congress passed the Federal Water Pollution Control Act Amendments of 1972, also known as the Clean Water Act (CWA), to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' (33 U.S.C. 1251(a)). The CWA establishes a comprehensive program for protecting our nation's waters. Among its core provisions, the CWA prohibits the discharge of pollutants from a point source to waters of the U.S. except as authorized under the CWA. Under section 402 of the CWA, EPA authorizes discharges by a National Pollutant Discharge Elimination System (NPDES) permit. The CWA establishes a two-pronged approach for these permits: Technology-based controls that establish the floor of performance for all dischargers, and water quality-based limits where the technology-based limits are insufficient for the discharge to meet applicable water quality standards. To serve as the basis for the technology-based controls, the CWA authorizes EPA to establish national technology-based effluent limitations guidelines and new source performance standards for discharges from different categories of point sources, such as industrial, commercial, and public sources, that discharge directly into waters of the U.S.

Direct dischargers (those discharging directly to surface waters) must comply with effluent limitations in NPDES permits. Technology-based effluent limitations in NPDES permits for direct dischargers are derived from effluent limitations guidelines (CWA sections 301 and 304) and new source performance standards (CWA section 306) promulgated by EPA, or based on best professional judgment where EPA has not promulgated an applicable effluent guideline or new source performance standard (CWA section 402(a)(1)(B) and 40 CFR 125.3). The effluent guidelines and new source performance standards established by regulation for categories of industrial dischargers are based on the degree of control that can be achieved using various levels of pollution control technology, as specified in the Act.

EPA promulgates national effluent limitations guidelines and standards of performance for major industrial categories for three classes of pollutants: (1) Conventional pollutants (total suspended solids, oil and grease, biochemical oxygen demand, fecal coliform, and pH) as outlined in CWA section 304(a)(4) and 40 CFR 401.16; (2) toxic pollutants (*e.g.,* toxic metals such as chromium, lead, mercury, nickel, and zinc) as outlined in section 307(a) of the Act, 40 CFR 401.15 and 40 CFR part 423, appendix A; and (3) non-conventional pollutants, which are those pollutants that are not categorized as conventional or toxic (*e.g.,* ammonia-N, formaldehyde, and phosphorus).

The CWA also authorizes EPA to promulgate nationally applicable pretreatment standards that restrict pollutant discharges from facilities that discharge pollutants indirectly, by sending wastewater to POTWs, as outlined in sections 307(b), (c) and 304(g) of the CWA. EPA establishes national pretreatment standards for those pollutants that may pass through, interfere with, or may otherwise be incompatible with POTW operations. CWA sections 307(b) and (c) and 304(g). The legislative history of the 1977 CWA amendments explains that pretreatment standards are technology-based and analogous to technology-based effluent limitations for direct dischargers for the removal of toxic pollutants. As further explained in the legislative history, the combination of pretreatment and treatment by the POTW is intended to achieve the level of treatment that would be required if the industrial source were making a direct discharge. Conf. Rep. No. 95–830, at 87 (1977), reprinted in U.S. Congress. Senate. Committee on Public Works (1978), A Legislative History of the CWA of 1977, Serial No. 95–14 at 271 (1978). As such, in establishing pretreatment standards, EPA's consideration of pass through for national technology-based categorical pretreatment standards differs from that described in EPA's General Pretreatment regulations at 40 CFR part 403. For categorical pretreatment standards, EPA's approach for pass through satisfies two competing objectives set by Congress: (1) That standards for indirect dischargers be equivalent to standards for direct dischargers; and (2) that the treatment capability and performance of the POTWs be recognized and taken into account in regulating the discharge of pollutants from indirect dischargers. CWA 301(b)(1)(A)(BPT); and 301(b)(1)(E).

2. Effluent Limitations Guidelines and Standards

EPA develops Effluent Guidelines Limitations and Standards (ELGs) that are technology-based regulations for specific categories of dischargers. EPA bases these regulations on the performance of control and treatment technologies. The legislative history of CWA section 304(b), which is the heart of the effluent guidelines program, describes the need to press toward higher levels of control through research and development of new processes, modifications, replacement of obsolete plants and processes, and other improvements in technology, taking into account the cost of controls. Congress has also stated that EPA need not consider water quality impacts on individual water bodies as the guidelines are developed; see Statement of Senator Muskie (October 4, 1972), reprinted in U.S. Senate Committee on Public Works, Legislative History of the Water Pollution Control Act Amendments of 1972, Serial No. 93–1, at 170).

There are standards applicable to direct dischargers (dischargers to surface waters) and standards applicable to indirect dischargers (dischargers to POTWs). The types of standards relevant to this rulemaking are summarized here.

a. Best Available Technology Economically Achievable (BAT)

BAT represents the second level of stringency for controlling direct discharge of toxic and nonconventional pollutants. In general, BAT-based effluent guidelines and new source performance standards represent the best available economically achievable performance of facilities in the industrial subcategory or category. Following the statutory language, EPA considers the technological availability and the economic achievability in determining what level of control represents BAT. CWA section 301(b)(2)(A). Other statutory factors that EPA considers in assessing BAT are the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, and non- water quality environmental impacts, including energy requirements and such other factors as the

Administrator deems appropriate. CWA section 304(b)(2)(B). The Agency retains considerable discretion in assigning the weight to be accorded these factors. *Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1045 (D.C. Cir. 1978).

b. Best Available Demonstrated Control Technology (BADCT)/New Source Performance Standards (NSPS)

NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology (BADCT). Owners of new facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the BADCT for all pollutants (that is, conventional, nonconventional, and toxic pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements. CWA section 306(b)(1)(B).

c. Pretreatment Standards for Existing Sources (PSES)

Pretreatment standards apply to dischargers of pollutants to POTWs; Pretreatment Standards for Existing Sources are designed to prevent the discharge of pollutants to POTWs that pass through, interfere with, or are otherwise incompatible with the operation of POTWs, including sludge disposal methods of POTWs. Categorical pretreatment standards for existing sources are technology-based and are analogous to BAT effluent limitations guidelines, and thus the Agency typically considers the same factors in promulgating PSES as it considers in promulgating BAT. See *Natural Resources Defense Council* v. *EPA,* 790 F.2d 289, 292 (3rd Cir. 1986).

d. Pretreatment Standards for New Sources (PSNS)

Like PSES, PSNS are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. New indirect discharges have the opportunity to incorporate into their facilities the best available demonstrated technologies. In establishing pretreatment standards for new sources, the Agency typically considers the same factors in promulgating PSNS as it considers in promulgating NSPS (BADCT).

e. Best Management Practices (BMPs)

Section 304(e) of the CWA authorizes the Administrator to publish regulations, in addition to effluent limitations guidelines and standards for certain toxic or hazardous pollutants, ''to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage which the Administrator determines are associated with or ancillary to the industrial manufacturing or treatment process . . . and may contribute significant amounts of such pollutants to navigable waters.'' In addition, section 304(g), read in concert with section 501(a), authorizes EPA to prescribe as wide a range of pretreatment requirements as the Administrator deems appropriate in order to control and prevent the discharge into navigable waters, either directly or through POTWs, any pollutant which interferes with, passes through, or otherwise is incompatible with such treatment works. (see also *Citizens Coal Council* v. *U.S. EPA,* 447 F3d 879, 895–96 (6th Cir. 2006) (upholding EPA's use of non-numeric effluent limitations and standards); *Waterkeeper Alliance, Inc.* v. *U.S. EPA,* 399 F.3d 486, 496–97, 502 (2d Cir. 2005) (EPA use of non-numerical effluent limitations in the form of BMPs are effluent limitations under the CWA); and *Natural Res. Def. Council, Inc.* v. *EPA,* 673 F.2d 400, 403 (D.C. Cir. 1982) (''section 502(11) [of the CWA] defines 'effluent limitation' as 'any restriction' on the amounts of pollutants discharged, not just a numerical restriction.''))

B. Dental Category Effluent Guidelines Rulemaking History and Summary of Public Comments

EPA published the proposed rule on October 22, 2014, and took public comment through February 20, 2015. During the public comment period, EPA received approximately 200 comments. EPA also held a public hearing on November 10, 2014. Administrative burden was a concern of many of the commenters on the 2014 proposed rule, particularly from regulatory authorities responsible for oversight and enforcement of the new standard. Commenters also provided additional information on amalgam separators (*e.g.,* costs, models, and design) as well as information on some other approaches to reduce pollutant discharges from dentists. Commenters also offered ways to improve and/or clarify the proposed pretreatment standards, including the proposed numerical efficiency and operation and maintenance requirements. See DCN DA00516 for these comments and EPA's responses.

C. Existing State and Local Program Requirements

Currently, 12 states (Connecticut, Louisiana,[1] Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New Mexico, New York, Rhode Island, Vermont, and Washington) have mandatory programs to reduce dental mercury discharges. Additionally, at least 18 localities (located in California, Colorado, Ohio, and Wisconsin) similarly have mandatory dental amalgam reduction pretreatment programs. EPA analyzed readily available information about these programs and found commonalities (DCN DA00524). For example, all require the use of amalgam separators and most specify associated operating and maintenance requirements. The majority of these programs also require some type of best management practices, and at least a one-time compliance report to the regulating authority.

D. Roles and Responsibilities Under the National Pretreatment Program

The National Pretreatment Program requires industrial dischargers that discharge to POTWs to comply with pretreatment standards. The General Pretreatment Regulations in 40 CFR part 403 establish roles and responsibilities for entities involved in the implementation of pretreatment standards. This section summarizes the roles and responsibilities of Industrial Users (IUs), Control Authorities, and Approval Authorities. For a detailed description, see the preamble for the proposed rule (79 FR 63279–63280; October 22, 2014).

An IU is a nondomestic source of indirect discharge into a POTW, and in this rule is the dental discharger. The Control Authority may be the POTW, the state, or EPA, depending on whether the POTW or the state is approved by EPA to administer the pretreatment program. The Control Authority is the POTW in cases where the POTW has an approved pretreatment program. The Control Authority is the state, where the POTW has not been approved to administer the pretreatment program, but the state has been approved. The Control Authority is EPA where neither the POTW nor the state have been approved to administer the pretreatment program. The Approval Authority is the

[1] Louisiana state requirements do not explicitly require dental offices to install amalgam separators; dental offices must follow BMPs recommended by the ADA in 1999. ADA added amalgam separators to the list of BMPs in 2008.

State (Director) in an NPDES authorized state with an approved pretreatment program; or the EPA regional administrator in a non-NPDES authorized state or NPDES state without an approved state pretreatment program.

Typically, an IU is responsible for demonstrating compliance with pretreatment standards by performing self-monitoring, submitting reports and notifications to its Control Authority, and maintaining records of activities associated with its discharge to the POTW. The Control Authority is the regulating authority responsible for implementing and enforcing pretreatment standards. The General Pretreatment Regulations require certain minimum oversight of IUs by Control Authorities. The required minimum oversight includes receipt and analysis of reports and notifications submitted by IUs, random sampling and analyzing effluent from IUs, and conducting surveillance activities to identify occasional and continuing non-compliance with pretreatment standards. The Control Authority is also responsible for taking enforcement action as necessary. For IUs that are designated as Significant Industrial Users (SIUs), Control Authorities must inspect and sample the SIU effluent annually, review the need for a slug control plan, and issue a permit or equivalent control mechanism. IUs subject to categorical pretreatment standards are referred to as Categorical Industrial Users (CIUs). The General Pretreatment Regulations define SIU to include CIUs. The Approval Authority is responsible for ensuring that POTWs comply with all applicable pretreatment program requirements. Among other things, the Approval Authority receives annual pretreatment reports from the Control Authority. These reports must identify which IUs are CIUs.

E. Minamata Convention on Mercury

On November 6, 2013, the United States joined the Minamata Convention on Mercury, a new multilateral environmental agreement that addresses specific human activities that are contributing to widespread mercury pollution. The agreement identifies dental amalgam as a mercury-added product for which certain measures should be taken. Specifically, the Convention lists nine measures for phasing down the use of mercury in dental amalgam, including promoting the use of best environmental practices in dental offices to reduce releases of mercury and mercury compounds to water and land. Nations that are parties to the Convention are required to implement at least two of the nine measures to address dental amalgam. This final rule contributes to the U.S.'s efforts to meet the measures called for in the treaty.

V. Description of Dental Industry & Dental Amalgam Wastewater Sources and Management

A. Dental Industry

The industry category affected by this final rule is Offices of Dentists (NAICS 621210), which comprises establishments of health practitioners primarily engaged in the independent practice of general or specialized dentistry, or dental surgery. These practitioners operate individual or group practices in their own offices or in the offices of others, such as hospitals or health maintenance organization medical centers. They can provide either comprehensive preventive, cosmetic, or emergency care, or specialize in a single field of dentistry.

According to the 2012 Economic Census, there are 133,221 U.S. dental offices owned or operated by 125,275 dental firms.[2] Only 2 percent of all dental firms are multi-unit, the rest are single-unit. The growth of the number of dental offices remained steady over the past decade with an average increase of 1 percent per year.

The industry includes mostly small businesses with an estimated over 99 percent of all offices falling below the Small Business Administration (SBA) size standard ($7.5 million in annual revenue). Using Census Bureau data, EPA estimates an average revenue for offices at $787,190 per year with an average of 6.6 employees per establishment.

According to ADA data, approximately 80 percent of the dental industry engages in general dentistry. Approximately 20 percent are specialty dentists such as periodontists, orthodontists, radiologists, maxillofacial surgeons, endodontists, or prosthodontists (DCN DA00460).

Dentistry may also be performed at larger institutional dental offices (military clinics and dental schools). Since EPA does not know if these offices are included in the 2012 Economic Census data, EPA conservatively assumed the largest offices are not present in the data, and so added an estimate of 415 larger institutional dental offices across the nation. For the final rule, EPA updated this number based on comments received on the proposed rule.

[2] A firm is a business organization, such as a sole proprietorship, partnership, or corporation.

B. Dental Amalgam Wastewater Sources and Management

Dental amalgam consists of approximately 49 percent mercury by weight. Mercury is the only metal that is in its liquid phase at room temperature, and it bonds well with powdered alloy. This contributes to its durability in dental amalgam. The other half of dental amalgam is usually composed of 35 percent silver, 9 percent tin, 6 percent copper, 1 percent zinc and small amounts of indium and palladium (DCN DA00131).

Sources of dental amalgam discharges generally occur in the course of two categories of activities. The first category of discharges may occur in the course of treating a patient, such as during the placement or removal of a filling. When filling a cavity, dentists overfill the tooth cavity so that the filling can be carved to the proper shape. The excess amalgam is typically rinsed into a cuspidor, or suctioned out of the patient's mouth. In addition to filling new cavities, dentists also remove old restorations that are worn or damaged. Removed restorations also may be rinsed into a cuspidor or suctioned out of the patient's mouth. Based on information in the record (DCN DA00456), removed restorations is the largest contributor of mercury in dental discharges.

The second category of dental amalgam discharges occurs in the course of activities not directly involved with the placement or removal of dental amalgam. Preparation of dental amalgam, disposing of excess amalgam, and flushing vacuum lines with corrosive chemicals present opportunities for dental amalgam to be discharged.

The use of dental amalgam has decreased steadily since the late 1970s as alternative materials such as composite resins and glass ionomers have become more widely available. Estimates show that placements of dental amalgam have decreased on average by about 2 to 3% per year (74 FR 38686; August 4, 2009). Based on this information, EPA estimates that mercury in dental amalgam discharges to POTWs will decrease by about half within the next 25 years. While the use of dental amalgam continues to decline, EPA estimates that approximately 2 tons of mercury would continue to be discharged to POTWs in 2040.

The typical plumbing configuration in a dental office consists of a chair-side trap for each chair, and a central vacuum pump with a vacuum pump filter. Chair-side traps and vacuum pump filters remove approximately 78

percent of dental amalgam particles from the wastewater stream (DCN DA00163). EPA identified three major technologies that capture dental amalgam waste, in addition to chair-side traps and vacuum pump filters, before it is discharged to the POTW: Separators, ion exchange, and wastewater containment systems. EPA also identified BMPs that have a significant impact on dental amalgam discharges.

1. Amalgam Separators

An amalgam separator is a device designed to remove solids from dental office wastewater. Amalgam separators remove amalgam particles from the wastewater through centrifugation, sedimentation, filtration, or a combination of any of these methods. Practically all amalgam separators on the market today rely on sedimentation because of its effectiveness and operational simplicity.

The vast majority of amalgam separators on the market today have been evaluated for their ability to meet the current American National Standards Institute's (ANSI) Standard for Amalgam Separators (ANSI/ADA Standard No. 108 for Amalgam Separators). This standard incorporates the International Organization for Standardization (ISO) Standard for Dental Amalgam Separators (*http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=42288*).[3] The current ISO standard for amalgam separators is ISO 11143. ISO established a standard for measuring amalgam separator efficiency by evaluating the retention of amalgam solids using specified test procedures in a laboratory setting. In order to meet the ISO standard, a separator must achieve 95 percent removal or greater of total solids. The ISO standard also includes certain design requirements and requirements for instructions for proper use and maintenance. For example, for non-sedimentation amalgam separators, the ISO 11143 standard requires a warning system such as an auditory or visual sign to indicate when the separator's efficiency is compromised to ensure that the operator is aware that the separator is not operating optimally. For sedimentation separators, the requirement can be met by providing instructions that would allow the operator to ascertain the operating status of the amalgam separator.

Based on reported removal efficiencies of a range of amalgam separators currently on the market that meet the ISO standard, separators obtain a median of 99 percent removal efficiency (see Chapter 7 of the TEDD) of total dental solids. When existing chair-side traps and vacuum pump filters are used upstream of the amalgam separators, the combined treatment system can achieve total mercury removal rates exceeding 99 percent (DCN DA00008).

Solids collected by the amalgam separator may be a combination of dental amalgam, biological material from patients, and any other solid material sent down the vacuum line. The collected solids must be handled in accordance with federal, state and local requirements. EPA regulates the disposal of mercury-containing hazardous waste under the Resource Conservation and Recovery Act (RCRA). A mercury-containing waste can be considered hazardous in two ways: (1) As a listed hazardous waste; or (2) as a characteristic hazardous waste. Unused elemental mercury being discarded would be a listed hazardous waste (waste code U151). Persons who generate hazardous waste, such as a waste that exhibits the hazardous characteristics for mercury, are subject to specific requirements for the proper management and disposal of that waste. The federal RCRA regulatory requirements differ depending upon how much hazardous waste a site generates per month. Most dental practices generate less than 100 kilograms of non-acute hazardous waste per month and less than 1 kilogram of acute hazardous waste per month. Such facilities are therefore classified as ''Very Small Quantity Generators'' (VSQGs). VSQGs are not subject to most of the RCRA hazardous waste requirements.

Many states have additional requirements for the handling of mercury, including waste dental amalgam. Chapter 6 of the TEDD provides additional details on the handling requirements for states that require dentists to control dental mercury dischargers. To facilitate compliance with state and local requirements, several amalgam separator manufacturers offer services that facilitate the transport of waste amalgam to facilities that separate mercury from other metals in dental amalgam and recycle the mercury, keeping it out of the environment. EPA recommends that dental dischargers take advantage of such services. In 2012, ADA posted a directory of amalgam recyclers on its Web site. See DCN DA00468.

For more information about amalgam separators, see the proposed rule (79 FR 63265; October 22, 2014).

2. Polishing To Remove Dissolved Mercury From Wastewater

Mercury from dental amalgam in wastewater is present in both the particulate and dissolved form. The vast majority (≤99.6 percent) is particulate (DCN DA00018). An additional process sometimes referred to as ''polishing'' uses ion exchange to remove dissolved mercury from wastewater. Dissolved mercury has a tendency to bind with other chemicals, resulting in a charged complex. Ion exchange is the process that separates these charged amalgam particles from the wastewater. For ion exchange to be most effective, the incoming wastewater must first be treated to remove solids. Then the wastewater needs to be oxidized (creating a charge on the amalgam particles) in order for the resin or mercury capturing material to capture the dissolved mercury. Therefore, ion exchange will not be effective without first being preceded by a solids collector and an oxidation process. The data available to EPA indicate that total additional mercury reductions with the addition of polishing are typically about 0.5 percent (DCN DA00164). This is not surprising since, as indicated above, dissolved mercury contributes such a small portion to the total amount of mercury in wastewater. In addition to polishing as described above, EPA is aware that vendors are developing amalgam separators with an improved resin for removing dissolved mercury. For additional discussion on polishing, see proposal (79 FR 63266; October 22, 2014).

3. Wastewater Retention Tanks

Commenters on the proposed rule identified wastewater retaining tanks as a third technology to reduce mercury discharges from dental offices to POTWs. Where currently used, these systems collect and retain *all*[4] amalgam process wastewater. The wastewater remains in the wastewater retention tank until it is pumped out of the tank and transferred to a privately owned wastewater treatment facility. This eliminates the discharge of amalgam process wastewater and the associated

[3] ANSI is the coordinator of the U.S. voluntary consensus standards system. An ISO document may be nationally adopted as an ANS as written or with modifications to its content that reflect technical deviations to the ISO standard that have been agreed upon through a consensus process. In other words, a consensus of U.S. experts, in an open and due process based environment, agreed that ISO 11143 with U.S. modifications is appropriate for adoption as an ANS.

[4] Dental offices using wastewater retention tanks must ensure that all amalgam process wastewater is collected by the wastewater retention tanks. Any uncollected amalgam process wastewater that is discharged to the POTW is subject to this rule.

pollutants from a dental office to a POTW.

4. Best Management Practices

In addition to technologies, EPA also identified best management practices currently used in this industry (and included in the ADA BMPs) to reduce dental amalgam discharges. In particular, EPA identified two BMPs to control dental amalgam discharges that would not be captured by an amalgam separator and/or polishing unit. Oxidizing line cleaners can solubilize bound mercury. If oxidizing cleaners are used to clean dental unit water lines, chair side traps, or vacuum lines that lead to an amalgam separator, the line cleaners may solubilize any mercury that the separator has captured, resulting in increased mercury discharges. One BMP ensures the efficiency of amalgam separators by prohibiting use of oxidizing line cleaners including but not limited to, bleach, chlorine, iodine and peroxide, that have a pH lower than 6 or greater than 8.[5]

Flushing waste amalgam from chair-side traps, screens, vacuum pump filters, dental tools, or collection devices into drains also presents additional opportunities for mercury to be discharged from the dental office. The second BMP prohibits flushing waste dental amalgam into any drain.

VI. Final Rule

A. Scope and General Applicability

Consistent with the proposal, dental offices that discharge to POTWs are within the scope of this final pretreatment rule.[6] EPA solicited information in the proposal from the public on its preliminary finding that, with few exceptions, dental offices do not discharge wastewater directly to surface waters. EPA did not receive any comments containing data to contradict this finding. Therefore, EPA is not establishing any requirements for direct wastewater discharges from dental offices to surface waters at this time.

The final rule applies to wastewater discharges to POTWs from offices where the practice of dentistry is performed, including large institutions such as dental schools and clinics; permanent or temporary offices, home offices, and facilities; and including dental offices owned and operated by federal, state, or local governments including military bases. The final rule does not apply to wastewater discharges from dental offices where the practice of dentistry consists exclusively of one or more of the following dental specialties: Oral pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics, periodontics, or prosthodontics. As described in the TEDD, these specialty practices are not expected to engage in the practice of amalgam restorations or removals, and are not expected to have any wastewater discharges containing dental amalgam.

The final rule also does not apply to wastewater discharges to POTWs from mobile units. EPA proposed to apply the standards to mobile units (typically a specialized mobile self- contained van, trailer, or equipment from which dentists provide services at multiple locations), soliciting comments and data pertaining to them (79 FR 63261; October 22, 2014). However, EPA is not establishing requirements for mobile units at this time because it has insufficient data to do so. EPA does not have, nor did commenters provide, data on the number, size, operation, or financial characteristics of mobile units. EPA also has minimal information on wastewater discharges from mobile units, and/or practices employed to minimize dental amalgam in such discharges. Therefore, any further evaluation of requirements for mobile units is not possible at this time, and the final rule requirements do not apply to mobile units.

B. Existing Source (PSES) Option Selection

After considering all of the relevant factors and dental amalgam management approaches discussed in this preamble and TEDD, as well as public comments, EPA decided to establish PSES based on proper operation and maintenance of one or more ISO 11143[7] compliant amalgam separators and two BMPs—a prohibition on the discharge of waste (or ''scrap'') amalgam to POTWs and a prohibition on the use of line cleaners that are oxidizing or acidic and that have a pH higher than 8 or lower than 6. EPA finds that the technology basis is ''available'' as that term is used in the CWA because it is readily available and feasible for all dental offices subject to this rule. Data in the record demonstrate that the technology basis is extremely effective in reducing pollutant discharges in dental wastewater to POTWs as the median efficacy of ISO compliant amalgam separators on the market in the U.S. is 99.3 percent. Moreover, ADA recommends that dentists use the technology on which this rule is based (ISO compliant amalgam separators and BMPs). Further, as described in Section III, EPA estimates that approximately 40 percent of dental offices potentially subject to this rule currently use amalgam separators on a voluntary basis or are in states or localities with laws requiring the use of amalgam separators. Many dentists have used amalgam separators and BMPs for at least a decade. For those dental offices that have not yet installed an amalgam separator, EPA estimates this is a low-cost technology with an approximate average annual cost of $800[8] per office. EPA's economic analysis shows that this rule is economically achievable (see Section IX). Finally, EPA also examined the incremental non-water-quality environmental impacts of the final pretreatment standards and found them to be acceptable. See Section XII.

EPA did not establish PSES based on technologies that remove dissolved mercury such as polishing. EPA is not aware of any state or local regulations that require ion exchange or that require removal of dissolved mercury. Commenters raised operational concerns with ion exchange citing a pilot study for the department of Navy. EPA also lacks adequate performance data to assess the efficacy of polishing for nationwide use. While even very small amounts of mercury have environmental effects, EPA lacks sufficient data to conclude that there is a significant difference in the performance between traditional amalgam separators and polishing. Moreover, current information suggests that polishing is not available for nationwide use because the typical dental office may not have adequate space to install the treatment train needed for effective polishing and because there are few polishing systems on the market today in comparison to traditional amalgam separators. Lastly, EPA estimates that the capital costs of the polishing system, as a stand-alone system, are approximately four times that of the amalgam separator even though the costs for chemical use, regenerating the resin, filter replacement, and other operational costs were not reported (DCN DA00122). These factors led EPA to find that polishing is not ''available'' as that term is used in the CWA.

[5] Many alternatives use enzymatic or other processes that do not lead to the dissolution of mercury when used to clean chairside traps, and vacuum lines. See DCN DA00215.

[6] The final rule does not apply to dental discharges to septic systems.

[7] ISO 11143 Standard as incorporated and updated by ANSI Standard 108 (ANSI 108/ISO 11143 Standard).

[8] This estimate is based on the average annualized cost for dental offices that do not currently have an amalgam separator. See DCN DA00458.

EPA also did not establish PSES based on wastewater retention tanks. Capital costs for wastewater retention tanks are approximately twice that of the amalgam separator (DCN DA00461). EPA does not have information on the costs incurred by the dental office to send the collected wastewater off-site to a privately owned treatment facility (may also be referred to as a centralized waste treatment facility or CWT). Furthermore, wastewater retention tanks require space, and EPA determined that the typical dental office may not have adequate space to install the tanks. In addition, EPA is only aware of one vendor currently offering this technology and service combination (vendor transfers the collected wastewater to a privately owned treatment facility), and the vendor's service area is limited to a few states. Therefore, EPA did not find this technology to be available to the industry as a whole.

C. New Source (PSNS) Option Selection

After considering all of the relevant factors and technology options discussed in this preamble and in the TEDD, as well as public comments, EPA decided to establish PSNS based on the same technologies identified above as PSES. As previously noted, under section 307(c) of the CWA, new sources of pollutants into POTWs must comply with standards that reflect the greatest degree of effluent reduction achievable through application of the best available demonstrated control technologies. Congress envisioned that new treatment systems could meet tighter controls than existing sources because of the opportunity to incorporate the most efficient processes and treatment systems into the facility design. The technologies used to control pollutants at existing offices, amalgam separators and BMPs, are fully available to new offices. In addition, data from EPA's record show that the incremental cost of an amalgam separator compared to the cost of opening a new dental office is negligible; therefore, EPA determined that the final PSNS present no barrier to entry (see Section IX below). Similarly, because EPA projects that the incremental non-water quality environmental impacts associated with controls for new sources would not exceed those for existing sources, EPA concludes the non-water quality environmental impacts are acceptable. Therefore, this final rule establishes PSNS that are the same as those for PSES.

EPA rejected other technologies as the basis for PSNS for the same reasons the Agency rejected other technology bases for PSES.

D. Requirements

1. Performance Standard

EPA finalized the performance standards based on the same technology identified in the proposed rule, amalgam separators.

EPA proposed a standard that would require dental dischargers to remove a specified percentage of total mercury from amalgam process wastewater and to follow the BMPs. Recognizing the impracticality of collecting and analyzing wastewater samples to demonstrate compliance with the standard for this industry, EPA included a provision by which dental offices could demonstrate compliance by certifying they were following the required BMPs and using an amalgam separator that achieved the specified percentage when tested for conformance with the ISO standard. EPA received comments regarding the proposed requirement. Commenters questioned the specified percent reduction, and raised concerns that the proposed standard could require dental offices to measure the percent removal being achieved by their amalgam separator, which was not the Agency's intent. In response to these comments, the final rule specifies a performance standard—BMPs and the use of an amalgam separator(s) compliant with the ISO standard rather than specifying a numerical reduction requirement. The final rule also includes a provision such that the performance standard can be met with the use of an amalgam removing technology other than an amalgam separator (equivalent device). EPA included this provision to incorporate future technologies that achieve comparable removals of pollutants from dental discharges as amalgam separators but that may not fall under the amalgam separator classification. Because the rule does not include a numerical limit, the performance standards also specify certain operation and maintenance requirements for the amalgam separator or comparable device to ensure they are operated optimally.

The final rule allows dental offices to continue to operate existing amalgam separators for their lifetime or ten years (whichever comes first), as long as the dental discharger complies with the other rule requirements including the specified BMPs, operation and maintenance, reporting, and recordkeeping requirements. Once the separator needs to be replaced or the ten-year period has ended, dental offices will need to replace the amalgam separator with one that meets the requirements of the final rule. EPA does not want to penalize existing dental offices or institutional dental offices that have already installed amalgam separators voluntarily or to comply with state or local requirements. EPA recognizes that these offices may currently have amalgam separators in place that do not meet the ANSI ADA specification or the criteria of the ISO 11143 2008 standard. EPA did not want to establish a rule that would require dental offices with existing separators that still have a remaining useful life to be retrofitted with new separators, both because of the additional costs incurred by dental offices that adopted technology to reduce mercury discharges ahead of EPA's requirements and because of the additional solid waste that would be generated by disposal of the existing separators.

In addition to installing one or more amalgam separators compliant with the ISO 11143 standard (or its equivalent) and implementing the required BMPs, the pretreatment standards specify certain operating and maintenance requirements for the amalgam separator. For example, the final rule requires a documented amalgam separator inspection to ensure the separator is performing properly. As explained in Section V, malfunctioning separators or separators that have reached their capacity are ineffective. Therefore, in order to ensure that mercury is not discharged from the facility, it is important that dentists know the operational status of their amalgam separator (see 40 CFR 441.40(c)). As such, the final rule requires the separator to be inspected per the manufacturer's instructions. In addition, as explained in Section V, the ISO standard specifies non-sedimentation separators must have a visual or auditory warning indicator when the separator is nearly full or operating in by-pass mode. While not required for sedimentation amalgam separators, some manufacturers of sedimentation amalgam separators include visual or auditory warning indicators. Because warning indicators make it easy to detect when the separator is not operating optimally, EPA encourages dental offices to select an amalgam separator with a warning indicator when installing a new amalgam separator.

EPA is aware that some amalgam separator vendors (in addition to providing the needed equipment) or service providers offer service contracts to maintain the system. These vendors also typically provide waste

management services for the collected solids. Some vendors also provide the necessary documentation and reports required by existing state and local programs. EPA encourages but does not require dental offices to consider such services, as they may aid compliance with the rule.

2. Applicability to Dental Offices That Do Not Place or Remove Dental Amalgam

In the final rule, dental dischargers that do not place dental amalgam, and do not remove dental amalgam except in limited emergency or unplanned, unanticipated circumstances are exempt from any further requirements as long as they certify such in their One-time Compliance Report to their Control Authority. In this way, if, over time, the use of dental amalgam is phased out as a restorative material, the requirements of this rule will no longer apply. By limited circumstances, EPA means, dental offices that remove amalgam at a frequency less than five percent of its procedures. As described below, based on the record, on average, this percent approximates to 9 removals per office per year (DCN DA00467).

Dental amalgam traditionally has been used as a restorative material for cavities because the malleability of newly mixed amalgam makes it easy to place into cavities and because of its durability over time. While still used in many dental offices in the U.S., some dental offices have elected not to use dental amalgam and instead use only non-mercury based filling materials, such as composite resins and glass ionomer cements (DCN DA00495). As explained in Section IV, removed restorations are the largest contributor of mercury in dental discharges. Some dental offices have also elected not to remove amalgam restorations.

EPA recognizes some dental offices only remove dental amalgam extremely infrequently, where there is an unplanned, unanticipated procedure. At the same time, for accepting new patients during the normal course of business, EPA would expect offices to inquire as to whether the patient has mercury fillings and not accept patients that have such fillings unless they install a separator or equivalent treatment in accordance with this rule. EPA proposed that dental offices that certify that they do not place or remove amalgam except in limited emergency circumstances would be exempt from any further requirements of the rule. EPA is clarifying in the final rule that the limited circumstances provision applies to the removal, but not to the placement of dental amalgam. A dental office that stocks amalgam capsules clearly intends to place amalgam, and does not represent the type of limited circumstance this provision is intended to address. Commenters largely supported this approach, and most commenters suggested EPA define limited emergency circumstances. The frequency recommended by these commenters ranged from once a quarter to 96 times a year (DCN DA00467).

EPA is including the limited circumstances provision in the final rule to allow a dental office that does not reasonably expect to place or remove dental amalgam to provide immediate treatment, such as where unplanned, unanticipated removal of the amalgam is necessary at that facility at that time, in the professional judgment of the dentist. EPA's intent is to exclude dental offices from the rule's requirements, other than a one-time report, for unplanned removals. In EPA's view, dental offices that remove amalgam at a frequency more often than five percent of its procedures are not likely engaging in only limited, unplanned removals. EPA estimates that on average, a single chair dental office would remove amalgam 183 times per year (DCN DA00467). An amalgam removal rate that represents less than five percent of this frequency consists of approximately nine removals per year, on average, respectively. However, because EPA does not have, nor did commenters provide, data on the frequency of such unplanned and unanticipated instances nationwide, the final rule does not include a specific definition of limited circumstances. Rather, EPA expects a dental office to carefully consider its operation in light of the information provided above and only certify accordingly to their Control Authority if it meets the situation EPA described.

3. Dental Discharger Reporting and On-Site Paperwork Compliance Requirements

Dental dischargers subject to this rule must comply with a one-time reporting requirement specified in the final rule in lieu of the otherwise applicable reporting requirements in 40 CFR part 403. Submission of reports as specified in this rule satisfies the reporting requirements in 40 CFR parts 403 and 441. For dental offices that do not place or remove dental amalgam except in limited circumstances, dental offices must submit a One-Time Compliance Report that includes information on the facility and a certification statement that the dental discharger does not place dental amalgam and does not remove amalgam except in limited circumstances. For dental offices that place or remove dental amalgam, the One-Time Compliance Report must include information on the dental facility and its operations and a certification that the dental discharger meets the requirements of the applicable performance standard. Dentists that utilize a third party to maintain their separator must report that information in their One-Time Compliance Report. Dentists that do not utilize a third party to maintain the amalgam separator(s) must provide a description of the practices employed by the office to ensure proper operation and maintenance. EPA suggests dental offices consider use of signs displayed prominently in the office or electronic calendar alerts to remind staff of dates to perform and document monthly inspections, cartridge replacement, etc.

If a dental practice changes ownership (which is a change in the responsible party, as defined in 40 CFR 403.12(l)), the new owner must submit a One-Time Compliance Report that contains the required information.

The One-Time Compliance Report must be signed by (1) a responsible corporate officer if the dental office is a corporation; (2) a general partner or proprietor if the dental office is a partnership or sole proprietorship; or (3) a duly authorized representative of the responsible corporate officer, or general partner or proprietor. This does not preclude a third party from submitting the report on behalf of a dental office as long as the submission also includes a proper signature as described above.

The final rule does not require electronic reporting nor does it prevent electronic reporting. EPA received several comments requesting that EPA develop an electronic compliance reporting system as a part of this final rule. These commenters generally advocated for electronic reporting due to the size of the industry and the proposed annual reporting requirement. During development of the final rule, EPA considered several variations of requirements for dental dischargers to report electronically (which would have necessitated an electronic system). Most commonly, electronic systems are preferable when reports must be submitted on a periodic basis. EPA ultimately decided not to specify electronic reporting in the final rule after it determined the final rule would only require a one-time compliance report from each affected dental discharger.

Still, EPA recognizes that some Control Authorities may prefer to receive the one-time reports electronically or to provide affected

dental dischargers with the option to report electronically. EPA also recognizes that electronic submittal of required reports could increase the usefulness of the reports, is in keeping with current trends in compliance reporting, and could result in less burden on the regulated community and the Control Authorities. EPA may develop and make available, via its E-Enterprise portal, an electronic reporting system that Control Authorities could use to facilitate the receipt of reports from dental dischargers, if they choose to do so. At some future date, EPA could decide to revise this final rule to require electronic reporting. If it chose to do so, EPA would first propose the revisions and provide an opportunity for public review and comment.

Finally, the final rule requires dental offices to document certain operation and maintenance requirements and maintain all records of compliance, as described in the regulation, and to make them available for inspection.

4. Control Authority Oversight/ Reporting

EPA proposed to amend selected parts of the General Pretreatment Regulations (40 CFR part 403) in order to simplify oversight requirements for the approximately 117,000 dental offices subject to the proposed rule. Specifically, EPA proposed to amend 40 CFR part 403 to create a new classification of categorical industrial users specifically tailored to pretreatment standards for dental offices, dental industrial user (DIU). EPA proposed that as long as a dental office complied with the requirements for DIUs, that it would not be considered an SIU. Among other things, this would have reduced the General Pretreatment Regulation oversight requirements for Control Authorities, such as the requirement to issue a control mechanism and annual inspection and sampling.

EPA received numerous comments related to the proposed change, particularly from the Control Authorities. These commenters largely supported the reduced oversight requirements in the proposal, but encouraged EPA to reduce them further so that dental offices would never be SIUs, primarily due to concerns over the associated burden given the large number of dental offices potentially subject to the rule. In addition, Control Authorities raised concerns that they would have to update state and local laws to take advantage of the proposed changes to part 403 that would reduce the oversight requirements. They also raised concerns about additional reporting requirements for the Control Authorities typically associated with CIUs, such as identifying CIUs in their annual pretreatment report to the Approval Authority.

In response, EPA did not revise the General Pretreatment Standards to create the proposed DIU category and associated requirements. Rather, this rule establishes for the purposes of part 441, that dental dischargers are not SIUs or CIUs as defined in 40 CFR part 403 unless designated as such by the Control Authority. This regulatory structure achieves the same goal as the proposed revisions to the General Pretreatment Standards—simplification of oversight requirements—without creating a need for updates to state and local laws. By establishing that dental dischargers are not SIUs or CIUs in the final rule, EPA eliminates the application of specific oversight and reporting requirements in 40 CFR part 403 such as permitting and annual inspections of dental dischargers for SIUs and CIUs unless the Control Authority chooses to apply these requirements to dental offices. This means that Control Authorities have discretion under the final rule to determine the appropriate manner of oversight, compliance assistance, and enforcement.[9] Further, the final rule reduced reporting for dental offices (and associated oversight requirements by Control Authorities) in comparison to reporting requirements for other industries subject to categorical pretreatment standards, as it requires only a One-Time Compliance Report be submitted to the Control Authority. The One-Time Compliance Report requirements specific to dental dischargers are included in this rule rather than in the General Pretreatment regulations so that they may be implemented directly. In summary, for this final rule, the Control Authorities must receive the One-Time Compliance Reports from dental dischargers and retain that notification according to the standard records retention protocol contained in § 403.12(o).

Where EPA is the Control Authority, EPA expects to explore compliance monitoring approaches that support sector-wide compliance evaluations, to the extent practicable. States and POTWs that are the Control Authority may elect to use the same approach but are not required to do so. One approach may be periodic review and evaluation of nationwide data on releases of dental amalgam metals (*e.g.,* mercury), relying on Discharge Monitoring Reports from POTWs, Annual Biosolids Reports from POTWs, emissions data from sludge incinerators, and supplemental data submitted to EPA under the Toxic Releases Inventory program. EPA may utilize an approach to compliance inspections that focuses on a statistically valid sample of the regulated community. EPA may then use the inspection findings from such an approach to identify common areas of noncompliance, which would inform decisions about needed outreach, compliance assistance, and training materials. EPA will work with state and local Control Authorities, the ADA and other partners to tailor oversight and outreach to the issues where such oversight and outreach is most likely to achieve compliance across the dental sector.

5. Interaction With Existing State and Local Mandatory Dental Amalgam Reduction Programs

The final rule applies to both dental offices that are subject to existing mandatory state or local dental amalgam reduction programs and those that are not. Some proposal commenters, many of whom are in states and localities with existing programs, questioned the application of this rule to dentists already subject to state and local programs noting the duplicative requirements. While EPA found that many of the existing programs contained at least one attribute of this final rule (*e.g.* separators, reporting, BMPs, operation and maintenance), the majority did not contain all of the attributes. Generally, the additional requirements (and associated costs) of this final rule are incremental over existing mandatory state or local dental amalgam reduction requirements. For example, a dentist located in a state or locality that does not require one or both of the BMPs specified in this rule must implement both BMPs. While the requirements of this rule are incremental to existing state and local regulatory requirements, EPA finds they are necessary to achieve the intended environmental objectives of the rule. Applying categorical pretreatment standards to pollutant discharges from dental offices irrespective of existing discharge requirements is consistent with the general approach to pretreatment standards under the CWA in that it establishes uniform requirements that form the floor of performance for all dischargers in a regulated category.

In addition, requiring all dental offices to meet the same requirements, regardless of the applicability of other

[9] Nothing stated in this section shall be construed so as to limit EPA's inspection and enforcement authority.

state or local requirements, avoids substantial implementation challenges and potential confusion associated with alternative approaches. EPA considered several approaches for accommodating dentists in states and localities with existing and local requirements. For example, EPA considered exempting dentists subject to equivalent state and local requirements from the scope of this rule. EPA rejected this approach, in part, due to the complexities and potential confusion associated with evaluating and communicating the equivalency of state and local requirements to this rule, particularly as they may change over time.

The rule establishes clear requirements for all parties and compliance with the final rule is simple and straightforward for dental offices and the regulating authorities. It requires dental offices to install and operate a separator, to implement two BMPs, and to submit a One-time Compliance Report to the Control Authority. Thereafter, the dental office will be required to conduct ongoing operation and maintenance and maintain associated records. These activities can be facilitated by third parties such as dental office suppliers and amalgam separator manufacturers. EPA does not expect the federal requirements to conflict with existing state or local mandatory amalgam reduction requirements. Rather, EPA concludes this final rule imposes only incremental additional requirements (*e.g.,* one-time compliance report) to their Control Authority, if any, on dental offices already subject to state or local amalgam reduction requirements. For Control Authorities, because EPA significantly reduced the oversight requirements associated with this rule, the incremental costs and burden to apply the final rule's requirements to dental facilities subject to some existing mandatory dental amalgam reduction requirements are minimal. The only incremental requirement associated with this rule is for the Control Authority to receive, review, and retain a One-time Compliance Report from dentists subject to this rule.

6. Variances

The provision of this rule establishing that dental dischargers are not SIUs or CIUs unless designated as such by the Control Authority does not change the otherwise applicable variances and modifications provided by the statute. For example, EPA can develop pretreatment standards different from the otherwise applicable requirements for an individual existing discharger subject to categorical pretreatment standards if it is fundamentally different with respect to factors considered in establishing the standards applicable to the individual discharger. Such a modification is known as a ''fundamentally different factors'' (FDF) variance. See 40 CFR 403.13 and the preamble to the proposed rule (79 FR 63278–63279, October 22, 2014). FDF variances traditionally have been available to industrial users subject to categorical pretreatment standards. Whether or not a dental discharger is an SIU or CIU, it is subject to categorical pretreatment standards and therefore eligible to apply for an FDF variance.

E. Pollutants of Concern and Pass Through Analysis

CWA section 301(b) directs EPA to eliminate the discharge of all pollutants where it is technologically available and economically achievable (after a consideration of the factors specified in section 304(b) of the Act). The first step in such an analysis is typically to identify Pollutants of Concern (POCs)—or the pollutants potentially regulated in the effluent guideline. For this rule, EPA identifies the primary metals in dental amalgam as pollutants of concern: Mercury, silver, tin, copper, and zinc.

Generally, in determining whether pollutants pass through a POTW when considering the establishment of categorical pretreatment standards, EPA compares the median percentage of the pollutant removed by POTWs achieving secondary treatment with the median percentage of the pollutant removed by facilities meeting BAT effluent limitations. EPA deems a pollutant to pass through a POTW when the percentage removed by POTWs is less than the percentage removed by direct dischargers complying with BPT/BAT effluent limitations. In this manner, EPA can ensure that the combined treatment at indirect discharging facilities and POTWs is at least equivalent to that obtained through treatment by a direct discharger, while also considering the treatment capability of the POTW. In the case of this final rulemaking, where EPA is only developing pretreatment standards, EPA compares the POTW removals with removals achieved by indirect dischargers using the technology that otherwise satisfies the BAT factors.

Historically, EPA's primary source of POTW removal data is its 1982 ''Fate of Priority Pollutants in Publicly Owned Treatment Works'' (also known as the 50 POTW Study). This well documented study presents data on the performance of 50 POTWs achieving secondary treatment in removing toxic pollutants. As part of the development of ELGs for the Centralized Waste Treatment (CWT) Industry promulgated in December 2000, EPA developed and documented a methodology, including data editing criteria, to calculate POTW percent removals for various toxic pollutants from the data collected in the study. EPA provided the opportunity for public comment on the percent removal methodology and the resulting percent removals in the CWT proposal. EPA similarly used and presented this methodology and data in subsequent ELG proposals and final rules. Using its long-standing approach, for this final rule, EPA determined the median percent removal by POTWs achieving secondary treatment is 90.2 percent for total mercury, and 42.6 percent to 88.3 percent for the other pollutants of concern.

As described above, the 50 POTW Study measured pollutant reductions on the basis of total metals. Total metals include particulate (suspended) and dissolved (soluble) forms of the metal. As discussed above, while mercury is present in dental amalgam in both the particulate and dissolved form, the vast majority (>99.6 percent) is particulate. While EPA does not have information on the distribution of the other metals, EPA reasonably assumes the same distribution for the other metals. Because secondary treatment technologies are not designed to remove dissolved metals, EPA assumes dissolved metals are not removed by POTWs and that the percent reductions for POTWs represent particulate reductions.

To determine the median percent removal of the pollutants of concern by amalgam separators, EPA collected information on the efficacy of existing separators. EPA excluded those separators that did not meet the 2008 ISO standards. At proposal, EPA determined the median percent removal of total mercury to be 99.0 percent, which is the reported removal when testing each of the amalgam separators marketed in the U.S. as conforming to the ISO standard (DCN DA00233). Commenters noted that existing data on the effectiveness of separators is measured as a percent reduction in mass, reflecting the dental amalgam particulates (rather than total mercury) collected by the device. EPA agrees the ISO standard evaluates particulates from dental amalgam rather than total mercury, and has adjusted its terminology accordingly. Based on updated information in the record, EPA determined the median percent removal of particulates by amalgam separators that meet the 2008 ISO standards is 99.3 percent. As such, because the median

percent removal of amalgam separators exceeds the median percent removal of well-operated POTWs employing secondary treatment for mercury and the other POCs, EPA determines that mercury and the other POCs pass through.

In addition to comments relating to dissolved mercury, EPA received other comments and data pertaining to the proposed median percent removal of ISO compliant amalgam separators. Some commenters supported the percentage identified in the proposal, noting that certain states require the same level of performance, or identifying separators documented as achieving or exceeding that removal efficiency. Other commenters questioned EPA's use of the data collected when laboratories certify amalgam separators to meet the ISO standard. More specifically, they asserted that the 2008 ISO standard requires the removal efficiency of the amalgam separator to be at least 95 percent on a mass fraction basis and as such, the ISO standard is not a validated test for measuring higher efficiencies. These commenters offered no data to demonstrate that the reported removals in excess of 95 percent were inaccurate, nor did commenters provide other efficiency data for amalgam separators. As it represents the best data available for the final rule, EPA appropriately used the data as reported to estimate the efficacy of amalgam separators for these purposes. EPA notes that even if commenters correctly characterized the minimum percent removal efficiency of amalgam separators meeting the 2008 ISO standard as 95 percent, this is a higher removal rate than the median percent removal by POTWs for all POCs. Therefore, while EPA based its analysis in the final rule on the percent removals as reported, under either case, EPA determines that mercury and the other POCs pass through.

Other commenters stated the 50 POTW Study data were old, and that current POTW removals are higher than 90 percent. Some provided case studies, many of which reflected POTWs with advanced treatment capabilities rather than secondary treatment. In particular, the National Association of Clean Water Agencies (NACWA) submitted data from a nationwide voluntary survey of its members regarding mercury reductions at POTWs. Based on its analysis of the data collected in this survey, NACWA calculated a three-year average removal efficiency of 94 percent.[10] EPA notes that even if EPA were to accept these data and analyses as presented by NACWA without further review, it would confirm EPA's conclusion that pass through of POCs occurs because this percentage is less than the median efficiency of 2008 ISO compliant amalgam separators of 99.3 percent.

EPA, however, gave full consideration to the NACWA survey and subjected the mercury influent and effluent data from the 41 POTWs from that survey to similar review and data editing criteria as influent and effluent data collected for the 50 POTW Study. In this way, EPA attempted to give the NACWA data full and equal consideration as the historical data from the 50 POTW Study. EPA created a database of the raw data in order to conduct its analysis. (DCN DA00463). When EPA calculated the median percent removal of the non-edited raw data as submitted by NACWA, the median plant performance was 93.8 percent, with a range of 57.2 percent to 99.1 percent. In reviewing the data used in that calculation, EPA identified numerous data points that would not satisfy the data editing criteria applied in the 50 POTW Study, including data points representing combined data rather than raw data, order of magnitude outlier concentrations, and incorrectly reported units of measure. Other discrepancies between data and analyses from the 50 POTW Study and NACWA survey include upward bias of using data from voluntary respondents, representing non-detect influent concentrations as zero,[11] inclusion of several POTWs using BNR (biological nutrient removal) and other advanced treatment expected to perform better than secondary treatment, overrepresentation of areas with existing dental amalgam reduction programs, and underrepresentation of certain geographical areas. Sensitivity analyses around these data are found in the record. (DCN DA00464).

Consequently, for all of the reasons identified above, for this final rule, EPA finds that data from the 50 POTW Study continues to represent the best data available to determine the percent removed nationwide by well operated POTWs employing secondary treatment. Based on the information in its record including full consideration of comments, EPA appropriately concludes that the median percent removal of amalgam separators is higher than the median percent removal of POTWs for mercury and the other pollutants of concern. As such, EPA concludes mercury and the other POCs pass through.

VII. Technology Costs

This section summarizes EPA's approach for estimating incremental compliance costs to implement changes associated with this rule, while the TEDD provides detailed information on the methodology. The costing methodology for the final rule is the same as that described in the proposal (79 FR 63269; October 22, 2014); however, EPA updated some of the specific data elements. EPA estimated compliance costs using data collected through EPA's Health Services Industry Detailed Study (August 2008) [EPA–821–R–08–014], a review of the literature, information supplied by vendors, and data submitted with comments on the proposed rule. In estimating the total cost of the regulatory options, EPA estimated costs for the following components: Capital costs and other one-time costs; installation costs; annual operation and maintenance costs; and recordkeeping and reporting costs. EPA incorporated information received in comments pertaining to specific elements of the cost analysis, resulting in an increase in the initial installation cost and a minor increase in the average costs of dental amalgam separators that meet the 2008 ISO standard. In addition, EPA adjusted the reporting and recordkeeping costs to reflect the final rule requirements.

The cost estimates reflect the incremental costs attributed only to this final rule. For example, offices required by a state or local program to have an amalgam separator compliant with the 2008 ISO 11143 standard will not incur costs to retrofit a separator as a result of this rule. Others may certify that they do not place or remove amalgam. Such offices may still have costs under this final rule such as those associated with the one-time reporting requirement to certify that they do not place or remove amalgam. EPA's cost methodology assumes dental offices would use the required BMPs in combination with 2008 ISO 11143 amalgam separators to comply with the rule. All final cost estimates are expressed in terms of 2016 dollars.

EPA used a model office approach to calculate costs of this rule. Under this approach, EPA developed a series of model dental offices that exhibited the

[10] EPA notes that in conducting its pass through analysis, EPA calculates and compares median percent removals rather than average percent removals.

[11] EPA generally handles non-detect values in the reported data by replacing them with a value of one-half of the detection level for the observation that yielded the non-detect. This methodology is standard procedure for the ELG program as well as Clean Water Act assessment and permitting, Safe Drinking Water Act monitoring, and Resource Conservation and Recovery Act and Superfund programs; and this approach is consistent with previous ELGs.

typical characteristics of the regulated dental offices, and then calculated costs for each type of model office. EPA then determined how many of each model office accurately represented the full universe of affected offices. While this part of the methodology remains unchanged from the proposal, EPA updated the number of offices in each model to reflect current existing state and local programs and, in the case of very large offices, to reflect new data obtained in public comments on the number of clinics and schools subject to this rule.

A. Costs for Model Dental Offices

EPA used the model approach to estimate costs for offices that place or remove amalgam for this final rule. EPA developed compliance costs for seven models, where each model is based on the number of chairs in an office. The ranges for each model are as follows: 1 to 2 chairs, 3 chairs, 4 chairs, 5 chairs, 6 chairs, 7–14 chairs (average of 10 chairs), and 15 chairs. EPA developed the 15 chairs model specifically to represent large institutional offices. This is discussed separately below in Section VII.B. EPA developed two sets of costs for each model: One for offices that do not use an amalgam separator and one for offices that do use an amalgam separator.

For those offices that currently do not use an amalgam separator, EPA estimated one-time and annual costs. One-time costs include purchase of the separator and installation, and preparation of the One-time Compliance Report. Annual costs, for those offices that do use an amalgam separator, include visual inspection, replacement of the amalgam-retaining unit (*e.g.,* cartridge or filter), separator maintenance and repair, recycling (preparation and services), and recordkeeping. Recordkeeping costs include documentation of inspection, separator maintenance and repair, and recycling (preparation and services). EPA also estimated periodic recordkeeping costs associated with repairs and One-Time Compliance Reports for new offices, which are included in the total of recordkeeping costs. Annual costs also include a cost offset, reflecting a cost savings as a result of changes that occur in the dental office due to the final rule requirements. More specifically, EPA received data in comments that an amalgam separator would protect the vacuum system filter and impeller blade from small particles, resulting in less frequent replacement and servicing of these elements when an amalgam separator has been installed. In the final rule cost analysis, EPA accordingly reduced the overall operation and maintenance costs for those dental offices that do not already have an amalgam separator. This cost offset reflects the reduced cost to dental offices of servicing the vacuum system filter and impeller blade. A summary of costs for dental offices that do not currently use amalgam separators may be found in Tables VII–1 and VII–2, see the TEDD for more details.

TABLE VII–1—SUMMARY OF ONE TIME MODEL FACILITY COSTS ($2016) FOR DENTAL OFFICES THAT DO NOT CURRENTLY USE AMALGAM SEPARATORS

Cost element	Number of chairs in the model dental office				
	1 or 2	3, 4, or 5 [12]	6	7 to 14	15
Separator Purchase	$437	$697	$1,058	$1,291	$2,424
Installation	235	276	276	358	942
One-Time Compliance Report	23	23	23	23	23

TABLE VII–2—SUMMARY OF ANNUAL MODEL FACILITY COSTS ($2016) FOR DENTAL OFFICES THAT DO NOT CURRENTLY USE AMALGAM SEPARATORS

Cost element	Number of chairs in the model dental office				
	1 or 2	3, 4, or 5 [13]	6	7 to 14	15
Replacement Parts	$275	$386	$559	$732	$1,078
Separator Maintenance	115	115	115	115	115
Maintenance Cost Off-set	−75	−75	−75	−75	−75
Recycling	91	91	91	91	91
Visual Inspection	18	18	18	18	18
Recordkeeping	62	62	62	62	62

For those offices that already have an amalgam separator, EPA calculated costs for certain incremental annual costs associated with the amalgam separator required for this rule. Because these offices have separators, EPA only included a one-time cost for a One-Time Compliance Report ($23/office). Annual costs for such offices include visual inspection, replacement of the amalgam-retaining unit, separator maintenance and repair, recycling (preparation and services), and recordkeeping. Because these offices have amalgam separators in place, they are already incurring the majority of these costs irrespective of this final rule. As such, for those components (*e.g.,* replacement of the cartridge and operation and maintenance), EPA calculated their incremental costs as a portion (percentage) of annual costs for dental offices without technology in place. Recordkeeping costs include documentation of inspection, separator maintenance and repair, and recycling (preparation and services). EPA also estimated periodic recordkeeping costs associated with repairs and One-Time Compliance Reports for new offices, which are included in the total of recordkeeping costs. EPA did not include the cost offset in this model, as

[12] EPA assumed the separator can be sized for 3, 4, or 5 chairs, but has kept these three model office sizes distinct because the economic analysis evaluates different revenues for each of these sized offices.

[13] EPA assumed the separator can be sized for 3, 4, or 5 chairs, but has kept these three model office sizes distinct because the economic analysis evaluates different revenues for each of these sized offices.

described above. A summary of these annual costs may be found in Table VII–3, see the TEDD for more details.

TABLE VII–3—SUMMARY OF ANNUAL MODEL FACILITY COSTS ($2016) FOR DENTAL OFFICES THAT CURRENTLY USE AMALGAM SEPARATORS

Cost element	Number of chairs in the model dental office				
	1 or 2	3, 4, or 5 [14]	6	7 to 14	15
Replacement Parts	$138	$193	$280	$366	$539
Separator Maintenance	58	58	58	58	58
Recycling	45	45	45	45	45
Inspection	18	18	18	18	18
Recordkeeping	62	62	62	62	62

In assessing the long term costs of rule compliance for these model offices (those with and without existing separators), EPA assumed that amalgam separators would have a service life of 10 years, at which time the amalgam separators would need to be replaced (DCN DA00163). Furthermore, the cost model assumes all dental amalgam separators installed prior to this rule would need to be replaced within 10 years of the effective date of this rule. Therefore, for the purposes of estimating compliance costs, EPA assumed that all offices subject to this rule would incur the cost of installing a new amalgam separator 10 years after the effective date of this rule. However, because various modifications needed by the office for initial amalgam separator installation would have already been completed, EPA has projected the installation costs for amalgam separators would be one-half of the cost of the original installation. EPA assumed that all dental offices would continue to incur recurring expenses such as O&M beyond year 10 in the same way as described for the initial installation. To the extent dental offices either close or certify they no longer remove or place amalgam, the costs are likely overstated.

EPA projects that there will be no incremental costs associated with the required BMPs because (1) costs for non-oxidizing, pH neutral line cleaners are roughly equivalent to other line cleaners; and (2) dental offices will not incur additional costs by changing the location for flushing waste amalgam.

B. Costs for Larger Institutional Dental Offices

Institutional dental offices (*e.g.,* military clinics or dental schools) have a larger number of chairs than the typical dental office. For these institutional dental offices, EPA developed a costing methodology based on the methodology for offices described above. For purposes of costs, consistent with the proposal, EPA assumed the average institutional office has 15 chairs.[15] As shown in Chapter 9 of the TEDD, EPA has cost information for five amalgam separators that have a maximum design ranging from 17–22 chairs. EPA also has costs for a unit that can be custom sized for chair sizes of 16 or greater. EPA used the information for these six separators to estimate costs for institutional facilities. See DCN DA00454. These costs are likely overstated as they do not reflect opportunities the largest offices may have to share costs,[16] and they do not assume any economies of scale. In addition, it is possible that the largest offices have multiple plumbing lines, allowing the installation of dental amalgam separators (or equivalent devices) only for those chairs used for placing or removing amalgam. See the proposed preamble and the TEDD for additional details on the costing methodology for institutional offices.

VIII. Pollutant Loads

As was the case for costing, EPA does not have office-specific discharge data for the approximately 117,000 dental offices potentially subject to this rule. Instead, EPA modeled the baseline, pre-rule discharges of mercury based on nationwide estimates of amalgam restorations and removals, and did not calculate the pollutant reductions on a per office basis. Rather, EPA calculated average mercury loadings by dividing the total number of annual procedures by the total number of dentists performing the procedure.[17] The technology basis used to estimate the compliance costs of this rule includes 2008 ISO 11143 amalgam separators available on the market today, and certain BMPs. The median performance of these separators is 99.3 percent. EPA assumes all offices have chair-side traps or a combination of chair-side traps and vacuum filters that result in 68 percent and 78 percent collection of dental amalgam, respectively (DCN DA00163). After accounting for mercury reductions achieved through existing chair-side traps and vacuum pump filters, EPA's analysis reduces remaining mercury loads to reflect the combination of chair-side traps, vacuum filters, and amalgam separators. Therefore, EPA assumed a post-rule reduction in mercury loads to POTWs based on a 99.8 percent removal rate. This is the same approach and data that EPA presented in the proposal (79 FR 623275; October 22, 2014).

Amalgam is comprised of roughly 49 percent mercury, 35 percent silver, 9 percent tin, 6 percent copper and 1 percent zinc (DCN DA00131). As explained earlier in Section VI, EPA concludes that the technology basis would be equally effective in reducing discharges of silver, tin, copper, and zinc as it is in reducing mercury. EPA therefore applied the same approach to estimating reductions of other metals found in dental amalgam. In other words, EPA assumes chair-side traps and the combination of chair-side traps and vacuum filters will result in 68 percent and 78 percent collection of these metals, respectively. Remaining amalgam metals are further reduced by an amalgam separator, as discussed above.

[14] EPA assumed the separator can be sized for 3, 4, or 5 chairs, but has kept these three model office sizes distinct because the economic analysis evaluates different revenues for each of these sized offices.

[15] This represents the number of chairs that can be used for the placement and/or removal of amalgam at a particular location. EPA received comments for institutional facilities indicating they had 7, 15, or 25 chairs. EPA selected the median of these values for purposes of this analysis.

[16] For example, multiple offices located in a single building or complex may be able to share plumbing, vacuum systems, and may be able to install a larger separator rather than each office having its own separator.

[17] Because this approach is based on the number of dentists, it includes those dentists both at offices and institutional offices.

A. National Estimate of Annual Pollutant Reductions to POTWs Associated With This Rule [18]

1. Mercury

EPA estimates the approximately 55,000 offices that install separators would obtain 99.3 percent removal of particulate mercury through the use of amalgam separators (median removal efficiency of amalgam separators; see Chapter 7 of the TEDD). This would result in reduction of particulate mercury discharges to POTWs by approximately 5.1 tons. Amalgam separators are not effective in removing dissolved mercury. However, dissolved mercury accounts for much less than 1 percent of the total mercury, so the form of mercury removed from discharges to POTWs is assumed to consist of particulate (solids) only.

2. Other Metals

As explained earlier in Section VI, EPA concludes that the technology basis for this final rule would be equally effective in reducing discharges of silver, tin, copper, and zinc as it is in reducing mercury. Accordingly, EPA estimates a reduction of these metal discharges to POTWs of approximately 5.3 tons.

3. Total Reductions

EPA estimates this final rule would annually reduce particulate mercury and other metal particulate discharges by a total of 10.3 tons.

B. National Estimate of Annual Pollutant Reductions to Surface Waters Associated With This Rule

In order to evaluate final discharges of mercury (and other metals) to waters of the U.S. by the POTW, EPA used its 50 POTW Study to calculate POTW removals of each metal. As explained above, at baseline and prior to implementation of this rule, EPA estimates 5.1 tons of dental mercury particulates are collectively discharged annually to POTWs. Based on the 50 POTW Study, EPA estimates POTWs remove 90.2 percent of dental mercury from the wastewater. Thus, POTWs collectively discharge 1,003 pounds of mercury from dental amalgam to surface waters annually. Under this final rule, 99.8 percent of mercury particulates currently discharged annually to POTWs will be removed prior to the POTW. The POTWs then further remove 90.2 percent of the remaining particulate mercury from the wastewater. This reduces the total amount of dental mercury particulates discharged from POTWs nationwide to surface water to 11 pounds of mercury annually. In other words, discharges of dental mercury to waters of the U.S. from POTWs are expected to be reduced by 992 pounds per year.[19] Similarly, EPA's 50 POTW Study data shows 42.6 percent to 88.3 percent of other metals in the wastewater are removed by POTWs. As explained above, EPA estimates 5.3 tons of other metals are also collectively discharged annually from dental offices to POTWs. Thus, POTWs collectively discharge approximately 2,178 pounds of other dental metals to surface waters annually. Following compliance with this rule, the total amount of other dental metal discharges from POTWs nationwide to surface waters will be approximately 24 pounds or a reduction of 2,153. See Chapter 11 of the TEDD for more details.

IX. Economic Impact Analysis

This section summarizes EPA's assessment of the total annual costs and impacts of the final pretreatment standards on the regulated industry.

A. Social Cost Estimates

As described earlier in Section VI of this preamble, EPA based the technology standard for the final rule on a widely available technology, amalgam separators, and employment of readily available BMPs. Section VII provides a detailed explanation of how EPA estimated compliance costs for model dental offices. As applicable, EPA annualized the capital costs over a 20-year period at a discount rate of 7 percent and 3 percent [20] and summed these costs with the O&M and reporting/recordkeeping costs to determine an annual compliance cost estimate for each model facility. See the TEDD for more details.

In order to develop a national estimate of social costs [21] based on these model offices, EPA estimated the number of dental offices represented by each model office. EPA categorized dental offices based on the number of chairs in each office.[22] The 2012 Economic Census does not provide information on the distribution of dental offices by the number of chairs in each office. However, two studies, the ADA National Study and a Colorado Study, estimate distribution of dentist offices by number of chairs (DCN DA00141 and DCN DA00149). EPA used these two data sources to correlate the number of chairs per office to the revenue range of dental offices. EPA averaged the correlation of these two studies to estimate the number of dental offices by the number of chairs. The results are reported in table IX–1:

TABLE IX–1—NUMBER OF DENTAL OFFICES BY NUMBER OF CHAIRS

Number of chairs	Number of offices by chair size		
	ADA survey	Colorado survey	Average
1–2 chairs	16,606	12,976	14,791
3 chairs	57,841	33,738	31,329
4 chairs	.....	38,928	33,924
5 chairs	35,638	19,032	18,425
6 chairs	.....	7,786	12,802
7+ chairs	23,136	20,762	21,949

[18] EPA's approach is not dynamic, as it does not account for declining use of dental amalgam. See additional discussion in V.B.

[19] Dissolved mercury accounts for a portion of surface water discharges, because amalgam separators do not remove dissolved mercury.

[20] See the TEDD for the reported analyses using both a 7 percent and 3 percent discount rate.

[21] Costs of the rule, from the standpoint of cost to society, include compliance costs and administrative costs to Control Authorities. Social costs would also incorporate any adjustment based on a quantity demand response to a change in price driven by a price change due to cost pass-through to consumers. For this analysis, EPA is not able to demonstrate an observable change in price for dental services, therefore no observable change in amount of visits (quantity demanded). Therefore, EPA makes no adjustment to social costs based on a change in quantity.

[22] Amalgam separators are typically designed based on the number of chairs.

TABLE IX–1—NUMBER OF DENTAL OFFICES BY NUMBER OF CHAIRS—Continued

Number of chairs	Number of offices by chair size		
	ADA survey	Colorado survey	Average
Total	133,221	133,221	133,221

To estimate nationwide social costs, EPA multiplied the estimated total annualized costs of rule compliance for each model office by the estimated number of dental offices represented by that model (*i.e.* with the indicated number of chairs and with/without existing amalgam separators). In EPA's analysis, for dental offices that do not place or remove amalgam, EPA assigned them costs for a baseline-compliance report. EPA then summed the values for each chair range over the number of chair ranges to yield the total estimated compliance cost. Similarly, EPA calculated costs for institutional offices by multiplying the compliance cost for its model institutional offices (15-chair model) by the number of estimated institutional offices indicated in Section V. Lastly, EPA estimated costs for Control Authorities to administer the final rule. Details of this cost analysis can be found in the TEDD. See Table IX–2 for EPA's estimate of total nationwide annualized social costs for this final rule using a 3 percent discount rate.[23]

TABLE IX–2—TOTAL ANNUALIZED SOCIAL COSTS BY NUMBER OF CHAIRS

[Millions of 2016 dollars]

Number of chairs	Total annualized costs by chair size [1]	
	Colorado survey	ADA survey
1–2 chairs	$4.2	$5.4
3 chairs	13.6	23.3
4 chairs	15.7	.....
5 chairs	7.7	16.4
6 chairs	4.0	.....
7–14 chairs	13.1	14.6
15 chairs	0.3	0.3
Cost to Control Authorities	0.8	0.8
Total Annualized Social Costs	59.4	60.8

[1] These costs reflect estimated costs discounted to the year of promulgation. EPA assumed that initial capital outlays and initial incurrence of ongoing compliance expenses would occur in the third year following rule promulgation. EPA assumed that the amalgam separator technology would have a service life of 10 years, and used a 20-year analysis period to allow for one-time replacement of capital equipment 10 years following the initial installation. A 3 percent discount rate was used for the analysis reported in this table; see the TEDD for the analysis reported with a 7% discount rate.

B. Economic Impact

EPA devised a set of tests for analyzing economic achievability. As is often EPA's practice, the Agency conducted a cost-to-revenue analysis to examine the relationship between the costs of the rule to current (or pre-rule) dental office revenues as a screening analysis. In addition, EPA chose to examine the financial impacts of the rule using two measures that utilize the data EPA has on dental office baseline assets and estimated replacement capital costs: (1) Ratio of the Final Rule's Capital Costs to Total Dental Office Capital Assets and (2) Ratio of the Final Rule's Capital Costs to Annual Dental Office Capital Replacement Costs.

EPA did not conduct a traditional closure analysis for this final rule because EPA does not have detailed data on baseline financial conditions of dental offices. Also, closure analyses typically rely on accounting measures such as present value of after-tax cash flow, and such accounting measures are difficult to implement for businesses that are organized as sole proprietorships or partnerships, as typically is the case in the dental industry. EPA considered whether it should exclude these offices from the analyses, which is described further in EPA's proposal (79 FR 63272; October 22, 2014). Because EPA did not receive any comments to the contrary, EPA used the same assumptions for this final rule as it did at proposal with regard to low-revenue offices. EPA concluded that offices making less than $25,400 were baseline closures as traditionally accounted for in cost and economic impact analysis for effluent guidelines rulemakings. Using the Economic Census, EPA estimated that to be approximately 531 offices. Still, because of the uncertainty here, EPA analyzed the impacts twice: (1) Excluding dental offices that could represent baseline closures and (2) including all offices in the analysis. For each of the three analyses conducted below, EPA used the same methodology for the final rule's impact analysis as described in the proposal because EPA did not receive any comments to suggest a different approach for each impact analysis. Lastly, EPA used a 7 percent discount rate for the costs used in these three analyses described below. See the proposed rule for further description of the analyses below (79 FR 63272; October 22, 2014).

[23] As a point of clarification, social costs equal the sum of compliance costs and administrative costs. Also, EPA used a 3 percent discount rate for the social costs analysis.

1. Cost-to-Revenue Analysis

To provide an assessment of the impact of the rule on dental offices, EPA used a cost-to-revenue analysis as is standard practice when looking at impacts to small businesses under the Regulatory Flexibility Act (RFA) to determine if a rule has the potential to have a significant impact on a substantial number of small entities. The cost-to-revenue analysis compares the total annualized compliance cost of each regulatory option with the revenue of the entities.

EPA estimated the occurrence of annualized compliance costs exceeding the 1 percent and 3 percent of revenue thresholds for the final rule twice: (1) Excluding dental offices that could represent baseline closures (excluding baseline set-aside offices), and (2) including all offices in the analysis (including baseline set-aside offices).

Table IX–3 summarizes the results from this analysis. As shown there, under either scenario, over 99 percent of dental offices subject to this rule would incur annualized compliance costs of less than 1 percent of revenue. With baseline set-asides excluded from the analysis, 808 offices (0.7 percent of offices using dental amalgam and exceeding the set-aside revenue threshold) are estimated to incur costs exceeding 1 percent of revenue; no offices are estimated to incur costs exceeding 3 percent of revenue. With baseline set-asides included in the analysis, 1,217 offices (1 percent of offices using dental amalgam) are estimated to incur costs exceeding 1 percent of revenue; 174 offices (0.1 percent of offices using dental amalgam) are estimated to incur costs exceeding 3 percent of revenue.

TABLE IX–3—COST-TO-REVENUE ANALYSIS IMPACT SUMMARY

Number of chairs	Total offices by chair size	Costs >1% revenue		Costs >3% revenue	
		Number	Percent	Number	Percent
Excluding Baseline Set-Aside Offices from Analysis					
1–2 chairs	12,914	808	6.3	0	0.0
3 chairs	27,353	0	0.0	0	0.0
4 chairs	29,619	0	0.0	0	0.0
5 chairs	16,087	0	0.0	0	0.0
6 chairs	11,177	0	0.0	0	0.0
7–14 chairs	19,163	0	0.0	0	0.0
Total	116,313	808	0.7	0	0.0
Including Baseline Set-Aside Offices in Analysis					
1–2 chairs	12,914	1,217	9.4	174	1.4
3 chairs	27,353	0	0.0	0	0.0
4 chairs	29,619	0	0.0	0	0.0
5 chairs	16,087	0	0.0	0	0.0
6 chairs	11,177	0	0.0	0	0.0
7–14 chairs	19,163	0	0.0	0	0.0
Total	116,313	1,217	1.0	174	0.1

2. Ratio of the Rule's Capital Costs to Total Dental Office Capital Assets

This ratio examines the initial spending on capital costs of compliance in relation to the baseline value of assets on the balance sheet of dental office businesses. EPA assumes a low ratio implies limited impact on dental offices' ability to finance the initial spending on capital costs of the final rule. A high ratio may still allow costs to be financed but could imply a need to change capital planning and budgeting.

Table IX–4 reports the findings from this analysis, specifically the weighted average of the initial spending on the proposed rule's capital costs divided by total assets of dental office across the revenue range/number-of-chairs analysis combinations. With baseline set-asides excluded from the analysis, the resulting initial capital costs to total capital assets values are low, with an average value 0.4 percent to 0.7 percent for the no technology in-place case and zero percent for the technology in-place case. With baseline closures included in the analysis, the resulting initial capital costs to total capital assets values are low, with an average value 0.4 percent to 0.7 percent for the no technology in-place case and 0 percent for the technology in-place case.

TABLE IX–4—INITIAL SPENDING AS PERCENTAGE OF PRE-RULE TOTAL DENTAL OFFICE CAPITAL ASSETS[1]

Number of chairs	Technology in place		No technology in place	
	Low	High	Low	High
Excluding Baseline Set-Aside Offices from Analysis				
1–2 chairs	0.1	0.0	2.4	1.2
3 chairs	0.0	0.0	0.9	0.5
4 chairs	0.0	0.0	0.6	0.4
5 chairs	0.0	0.0	0.3	0.2
6 chairs	0.0	0.0	0.3	0.2
7–14 chairs	0.0	0.0	0.2	0.1

TABLE IX–4—INITIAL SPENDING AS PERCENTAGE OF PRE-RULE TOTAL DENTAL OFFICE CAPITAL ASSETS[1]—Continued

Number of chairs	Technology in place		No technology in place	
	Low	High	Low	High
Weighted Average	0.0	0.0	0.7	0.4
Including Baseline Set-Aside Offices in Analysis				
1–2 chairs	0.1	0.0	3.0	1.5
3 chairs	0.0	0.0	0.9	0.5
4 chairs	0.0	0.0	0.6	0.4
5 chairs	0.0	0.0	0.3	0.2
6 chairs	0.0	0.0	0.3	0.2
7–14 chairs	0.0	0.0	0.2	0.1
Weighted Average	0.0	0.0	0.7	0.4

[1] EPA used the baseline asset value for the minimum (reported as low) and maximum (reported as high) revenue values by number-of-chairs category as the denominator for the ratio. Total final rule compliance costs, as described in Section IX above, were assigned to each number-of-chairs category as the numerator for the ratio.

3. Comparison of the Rule's Capital Costs to Annual Dental Office Capital Replacement Costs

EPA also compared the initial spending on capital costs of compliance associated with this rule to the estimated capital replacement costs for a dental office business (*e.g.,* computer systems, chairs, x-ray machines, etc.) across all chair sizes. The capital replacement costs represent a value that dental offices may reasonably expect to spend in any year to replace and/or upgrade dental office capital equipment. EPA assumes a low ratio implies limited impact on dental offices' ability to finance the initial spending on capital costs of the final rule. A high ratio may still allow costs to be financed but could imply a need to change capital planning and budgeting. As expected, the results for this ratio are higher than the previous ratio in the test above, given that EPA expects replacement costs would be smaller than total capital assets. EPA performed this test because this ratio is based on a different data source, and so it provides an independent check that abstracts from the limitations of the data used in the test above. The resulting values for the final rule range from 2.0 percent to 2.8 percent, with a weighted average of 2.4 percent across all chair size ranges.

TABLE IX–5—INITIAL SPENDING AS PERCENTAGE OF ESTIMATED ANNUAL DENTAL OFFICE CAPITAL REPLACEMENT COSTS [1]

Number of chairs	Percent
1–2 chairs	2.7
3 chairs	2.8
4 chairs	2.3
5 chairs	2.0
6 chairs	2.3
7 chairs	2.5
8 chairs	2.3
9 chairs	2.1
Weighted Average	2.4

[1] EPA estimated capital replacement costs, accounting for the total value of equipment purchases for different numbers of chairs, and the composition of purchases by equipment life category by number-of-chairs as the denominator for the ratio. EPA assigned total final rule compliance costs, as described above in Section IX, to each number-of-chairs as the numerator for the ratio.

C. Economic Achievability

The analyses performed above inform the potential economic impact of this final rule on the dental office sector. In the cost-to-revenue analysis, EPA found that no more than 0.1 percent of offices, mostly in the lower revenue ranges, would potentially incur costs in excess of 3 percent of revenue. The two financial ratios reported in Tables IX–3 and IX–4 show that the final rule will not cause dental offices to encounter difficulty in financing initial spending on capital costs of the final rule. Based on the combined results of the three analyses and that EPA had no data since proposal to suggest otherwise, EPA determined that the final rule is economically achievable. Regarding large offices, EPA notes that, due to a lack of data, the economic impact analyses did not include large institutional offices. EPA did not receive comments indicating large offices would be impacted more or less than other dental offices subject to this rule. Given the results of the economic analysis performed on a range of office sizes indicating that the rule is economically achievable, EPA finds the rule would similarly be achievable for large institutional offices.

EPA determined that the final pretreatment standard for new sources will not be a barrier to entry. EPA relied on data describing the equipment needs and costs for starting a dental practice as compiled in Safety Net Dental Clinic Manual, prepared by the National Maternal & Child Oral Health Resource Center at Georgetown University (see DCN DA00143). Information from the Georgetown Manual demonstrates that the amalgam separator capital costs (based on costs for existing model offices as described in Section VII) comprised 0.2 percent to 0.3 percent of the cost of starting a dental practice as shown in Table IX–6 and, therefore, does not pose a barrier to entry.

TABLE IX–6—INITIAL SPENDING AS PERCENTAGE OF ESTIMATED DENTAL OFFICE START-UP COSTS

Number of chairs	Percent
1–2 chairs	0.3
3 chairs	0.3
4 chairs	0.3
5 chairs	0.2
6 chairs	0.3
7 chairs	0.3
8 chairs	0.3
9 chairs	0.3
Weighted Average	0.3

X. Cost-Effectiveness Analysis

EPA often uses cost-effectiveness analysis in the development and revision of ELGs to evaluate the relative efficiency of alternative regulatory options in removing toxic pollutants from effluent discharges to our nation's waters. Although not required by the CWA, and not a determining factor for establishing PSES or PSNS, cost-effectiveness analysis can be a useful

tool for describing regulatory options that address toxic pollutants.

EPA defines the cost-effectiveness of a regulatory option as the incremental annual cost (in 1981 constant dollars to facilitate comparison to ELGs for other industrial categories promulgated over different years) per incremental toxic-weighted pollutant removals for that option. For more information about the methodology, data, and results, see Chapter 12 of the TEDD. EPA determines toxic-weighted pollutant removals for a particular pollutant by multiplying the number of pounds of a pollutant removed by an option by a toxic weighting factor (TWF). The toxic weighting factor for each pollutant measures its toxicity relative to copper,[24] with more toxic pollutants having higher toxic weights. The use of toxic weights allows EPA to express the removals of different pollutants on a constant toxicity basis as toxic-pound-equivalents (lb-eq). In the case of indirect dischargers, the removal also accounts for the effectiveness of treatment at POTWs and reflects the toxic-weighted pounds after POTW treatment. The TWFs for the pollutants of concern are shown in Table X–1.

TABLE X–1—TOXIC WEIGHTING FACTORS FOR POLLUTANTS IN DENTAL AMALGAM

Mercury	110
Silver	16.47
Tin	0.301
Copper	0.623
Zinc	0.047

The costs used in the cost-effectiveness analyses are the estimated annual pre-tax costs described in Section IX, restated in 1981 dollars as a convention to allow comparisons with the reported cost effectiveness of other effluent guidelines. Collectively, the final PSES requirements have a cost-effectiveness ratio of $190–$195/lb-equivalent as shown in Table X–2 below. This cost-effectiveness ratio falls within the range of cost-effectiveness ratios for PSES requirements in other industries. A review of approximately 25 of the most recently promulgated or revised categorical pretreatment standards shows PSES cost-effectiveness ranges from less than $1/lb-equivalent (Inorganic Chemicals) to $380/lb-equivalent (Transportation Equipment Cleaning) in 1981 dollars.

TABLE X–2—PSES COST EFFECTIVENESS ANALYSIS

Final option	Pre-tax total annualized costs ($1981 M)	Removals (lbs-eq)	Average cost effectiveness
Colorado Survey	$23.5	123,552	$190
ADA National Survey	24.1	123,552	195

XI. Environmental Assessment

A. Environmental Impacts

EPA conducted a literature review concerning potential environmental impacts associated with mercury in dental amalgam discharged to surface water by POTWs (DCN DA00148). As discussed above, studies indicate that dental offices are the largest source of mercury entering POTWs. The total annual baseline discharge of dental mercury to POTWs is approximately 10,239 pounds (5.1 tons): 10,198 pounds are in the form of solid particles (99.6 percent) and 41 pounds (0.4 percent) are dissolved in the wastewater (DCN DA00018). Through POTW treatment, approximately 90 percent of dental mercury is removed from the wastewater and transferred to sewage sludge. The 10 percent of dental mercury not removed by POTW treatment is discharged to surface water. EPA estimates that POTWs annually discharge approximately 1,003 pounds of dental mercury nationwide.

The CWA regulations known as *Standards for Use and Disposal of Sewage Sludge,* 40 CFR part 503, control the land application, surface disposal, and incineration of sewage sludge generated by POTWs. Of the 11.2 billion dry pounds of sewage sludge generated annually, about 60 percent, or 6.7 billion pounds, are treated to produce biosolids for beneficial use as a soil amendment and applied to about 0.1 percent of agricultural lands in the United States (DCN DA00257). Approximately 5,500 pounds per year of dental mercury are contained in land-applied biosolids.

Approximately 18 percent, or 2 billion pounds, of the sewage sludge generated annually by POTWs are surface disposed in sewage sludge mono-fills or municipal landfills. Approximately 1,700 pounds per year of dental mercury are contained in surface disposed sewage sludge. Pollutant limits and monitoring requirements for surface disposed sewage sludge mono-fills are set by 40 CFR part 503 and by 40 CFR part 258 for municipal landfills. There may be additional state or local regulations that are more stringent than the federal biosolids regulations.

The remaining 22 percent, or 2.5 billion pounds, of sewage sludge generated annually by POTWs is disposed of through incineration. Approximately 2,000 pounds per year of dental mercury are contained in incinerated sewage sludge. 40 CFR part 503, subpart E sets requirements for the incineration of mercury and other toxic metals in sludge. For mercury, subpart E provides that incineration of sludge must meet the requirements of the National Emissions Standards for Mercury in subpart E of 40 CFR part 61.

Environmental assessment of impacts associated with POTW discharges of dental mercury is complicated by uncertainties about the fate and transport of mercury in aquatic environments. The elemental form of mercury used in dentistry has low water solubility and is not readily absorbed when ingested by humans, fish, or wildlife. However, elemental mercury may be converted into highly toxic methylmercury in aquatic environments by certain forms of anaerobic sulfate-reducing bacteria. Methylmercury has high potential to become increasingly concentrated up through aquatic food chains as larger fish eat smaller fish.

[24] When EPA first developed TWFs in 1981, it chose the copper freshwater chronic aquatic life criterion of 5.6 µg/L as the benchmark scaling factor for deriving TWFs because copper was a common and well-studied toxic chemical in industrial waste streams. Consequently, the basic equation for deriving the TWF for any chemical is: TWF = 5.6 µg/L/Aquatic Life Value (µg/L) + 5.6 µg/L/Human Health Value (µg/L). The chronic freshwater aquatic life criterion for copper, however, has been revised three times since it was first published in 1980 due to advances in the scientific understanding of its toxic effects. Thus, when calculating the TWF for copper, EPA normalizes the 1998 chronic freshwater aquatic life copper criterion of 9.0 µg/L to the original 1980 copper criterion of 5.6 µg/L by dividing 5.6 µg/L by 9.0 µg/L and adding the quotient to 5.6 µg/L divided by the copper human health value of 4444 µg/L, which results in a copper TWF of 0.623.

Fish commonly eaten by humans may have methylmercury levels 100,000 times that of ambient water. The neurological effects of consumption of methylmercury-contaminated fish are well documented. Developmental effects to fetuses, infants, children, and fish consumption by women of childbearing age are of special concern. Neurological effects from predation of methylmercury-contaminated fish have been documented to occur in wild populations of fish, birds, and mammals in many areas of the United States (DCN DA00202). A plausible link has been identified between anthropogenic sources of mercury in the United States and methylmercury in fish. However, fish methylmercury concentrations also result from existing background concentrations of mercury which may consist of mercury from natural sources and atmospheric deposition of mercury in the United States from sources in other countries. Given the current scientific understanding of the environmental fate and transport of mercury, it is not possible to quantify how much of the methylmercury in fish consumed by the U.S. population is contributed by U.S. emissions relative to international mercury sources or natural mercury sources.

EPA was unable to assess the specific environmental impacts of dental mercury discharged by POTWs due to insufficient data needed to evaluate several fundamental factors about the discharge, fate, and transport of dental mercury in aquatic environments, including: the degree and geographic extent of dental mercury methylation in aquatic environments, the amount of methylated dental mercury that is taken up by fish and wildlife, the human consumption rates of fish contaminated with methylated dental mercury, and the extent and magnitude of naturally-occurring mercury in aquatic environments.

B. Environmental Benefits

While EPA did not perform a quantitative environmental benefits analysis of the final rule, due to insufficient data about the aquatic fate and transport of dental mercury discharged by POTWs, EPA was able to assess the qualitative environmental benefits based on existing information. For example, EPA identified studies that show that decreased point-source discharges of mercury to surface water result in lower methylmercury concentrations in fish. Moreover, several studies quantify economic benefits from improved human health and ecological conditions resulting from lower fish concentrations of methylmercury (DCN DA00148). The final pretreatment standards will produce human health and ecological benefits by reducing the estimated annual nationwide POTW discharge of dental mercury to surface water from 1,003 pounds to 11 pounds.

XII. Non-Water Quality Environmental Impacts Associated With the Technology Basis of the Rule

Eliminating or reducing one form of pollution may cause other environmental problems. Sections 304(b) and 306 of the Clean Water Act require EPA to consider non-water quality environmental impacts (including energy requirements) associated with effluent limitations guidelines and standards. To comply with these requirements, EPA considered the potential impact of the technology basis on energy consumption, air pollution, and solid waste generation. As shown below, EPA anticipates that the rule would produce minimal non-water quality environmental impacts and as such determined they are acceptable. Additional information about the analysis of these non-water quality impacts is contained in the TEDD.

A. Energy Requirements

Net energy consumption considers the incremental electrical requirements associated with operating and maintaining dental amalgam separators used in combination with BMPs that form the technology basis for the standards. As described in Section V, most amalgam separators use sedimentation, either alone or in conjunction with filtration to remove solids in the waste stream. Most separators rely on gravity or the suction of the existing vacuum system to operate, and do not require an additional electrical power source. As noted in Section V, some separators have warning indicators that require a battery or power source. EPA does not anticipate this would pose any considerable energy requirements. Moreover, the addition of an amalgam separator is likely to reduce energy consumption at dental offices that do not currently employ an amalgam separator as it will prevent small particles from impeding the vacuum pump impeller. A clean impeller is more efficient than a dirty impeller, and thus will draw less energy (DCN DA00465). Upon consideration of all of these factors, EPA concludes there will be no significant energy requirements associated with this final rule.

B. Air Emissions

Unbound mercury is highly volatile and can easily evaporate into the atmosphere. An estimated 99.6 percent of dental mercury discharges are in solid bound form; *i.e.* elemental mercury bound to amalgam particles (DCN DA00018). Because the majority of dental mercury is bound to solid particles, it likely will not volatize to the atmosphere. Therefore, EPA expects the final PSES and PSNS will not pose any increases in air pollution.

C. Solid Waste Generation

In the absence of amalgam separators, a portion of the amalgam rinsed into chair-side drains is collected by chair-side traps. The remainder is discharged to the POTW where the vast majority is removed from the wastewater and becomes part of the POTW sludge that may be land-applied, disposed of in landfills or mono-fills, or incinerated. EPA expect the final rule to increase the use of amalgam separators nationwide by one and a half times with a corresponding increase in collection and recycling of used amalgam from the spent separator canisters. EPA expects the operation and maintenance requirements associated with the amalgam separator compliance option included in the final rule will further promote recycling as the primary means of amalgam waste management, because many amalgam separator manufactures and dental office suppliers have begun offering waste handling services that send dental amalgam waste to retorting and recycling facilities. Nationally, EPA expects less dental amalgam will be discharged to POTWs leading to reductions in the amount of mercury discharged to surface waters and land-applied, landfilled, or released to the air during incineration of sludge. Instead, EPA expects that the waste will be collected in separator canisters and recycled. After the amalgam containing waste has been recycled, the canisters are either recycled or landfilled. For purposes of assessing the incremental solid waste generation, EPA conservatively assumes all of the canisters are landfilled. EPA finds that if each dental office generated an average of 2 pounds of spent canisters per year, the total mass of solid waste generated would still comprise less than 0.0001 percent of the 254 million tons of solid waste generated by Americans annually (DCN DA00496). Based on this evaluation of incremental solid waste generation, EPA concludes there will not be a significant incremental non-water quality impact associated with

solid waste generation as a result of this final rule.

XIII. Standards for Reference

This rule references standards from the American National Standards Institute/American Dental Association and the International Organization for Standardization, and in compliance with the National Technology Transfer and Advancement Act (see Section XIV). They are available either at EPA's Water Docket (see **ADDRESSES** section above) for inspection, or on their respective Web sites to everyone at a cost determined by the respective Web site, generally from $100 to $150. The cost of obtaining these standards is not a significant financial burden for a discharger or environmental laboratory, making the standards reasonably available. The individual standards are discussed in greater detail below.

The installation, operation, and maintenance of one or more amalgam separators compliant with either the ADA 2009 standard with the 2011 addendum, or the ISO standard when removing dental amalgam solids from all amalgam process wastewater:

- ANSI/ADA Specification No. 108:2009, American National Standard/ American Dental Association Specification No. 108 Amalgam Separators.
- ANSI/ADA Specification No. 108:2009 Addendum, American National Standard/American Dental Association Specification No. 108 Amalgam Separators, Addendum.
- International Standard ISO 11143;2008, Dentistry—Amalgam Separators.

XIV. 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 because it raises novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket. The economic analysis is available in the docket (DCN DA00458) and is briefly summarized in Section IX. The benefits are summarized in Section XI.

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2514.02. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

EPA estimates it would take a total annual average of 402,000 hours and $7.2 million for affected dental offices to collect and report the information required in the final rule. This estimate includes effort for each dental office associated with completing a one-time compliance report. EPA based this estimate on average labor rates from the Bureau of Labor Statistics for the dental office personnel involved in collecting and reporting the information required. EPA estimates it would take a total annual average of 34,000 hours and $2.02 million for Control Authorities to review the information submitted by dental offices. EPA estimates that there would be no start-up or capital costs associated with the information described above. Burden is defined at 5 CFR 1320(b).

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 are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce the approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities in this final rule.

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are defined as: (1) A small business in the Dental Office sector (NAICS 621210) with annual receipts of 7.5 million dollars or less (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The Agency has determined that 116,014 dental offices out of 116,720 dental offices potentially subject to this final rule meet the small business definition. EPA's analysis of projected impacts on small dental offices is described in detail in Section IX. EPA projects less than 1 percent of 116,720 affected dental offices would incur compliance costs exceeding 1 percent of revenue and no more than 0.2 percent would incur compliance costs exceeding 3 percent of revenue.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this final rule on small entities. First, this final rule will allow dental offices with existing separators to satisfy the requirements for a period of up to 10 years. Second, EPA significantly reduced the rule's reporting requirements for all affected dental offices as compared to the reporting requirements for other industries with categorical pretreatment standards.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The annual cost of the final rule is $59 to $61 million; thus, this final rule is not subject to the requirements of sections 202 or 205 of UMRA.

This final rule is also not subject to the requirements of section 203 of UMRA, because it contains no regulatory requirements that may significantly or uniquely affect small governments. EPA has not identified any dental offices that are owned by small governments. While this final rule impacts government entities required to administer pretreatment standards, small governments will generally not be affected. By statute, a small government jurisdiction is defined as a government of a city, county, town, school district or special district with a population of less than 50,000 (5 U.S.C 601). Control authorities are responsible for oversight and administration associated with this final rule. A POTW is required to become a Control Authority when it (or a combination of POTWs operated by the same authority) has a design flow of at least 5 million gallons per day and receives pollutants from industrial users that would pass through or interfere with the operations and cause a violation of the POTW's NPDES permit. The average water use per person is 100 gallons per day so a POTW with a

population less than 50,000 would likely have a flow less than 5 MGD. Therefore, EPA does not expect small government owned POTWs to be required to become a Control Authority. EPA is aware that some small POTWs have approved pretreatment programs so they serve as a Control Authority. To the extent small POTWs with pre-existing approved pretreatment programs receive dental discharges subject to this rule, they would incur some incremental oversight requirements as described in Section VI. However, EPA expects such cases to be limited.

E. 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.

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

This final rule does not have tribal implications, as specified in Executive Order 13175. It does not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. This final rule 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 final rule.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not project the environmental health or safety risks addressed by this action present a disproportionate risk to children. This final rule will reduce the amount of mercury from dental amalgam entering POTW's and eventually the nation's waters, which will reduce impacts to the neurological development of children.

H. Executive Order 13211: Energy Effects

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. EPA determined that any additional energy usage would be insignificant to the total energy usage of Dental Offices and total annual U.S. energy consumption.

I. National Technology Transfer and Advancement Act

This final rule involves technical standards. The Agency decided to use the American National Standards Institute (ANSI) American National Standard/American Dental Association (ADA) Specification 108 for Amalgam Separators (2009) with Technical Addendum (2011) or the International Organization for Standardization (ISO) 11143 Standard (2008) or the International Organization for Standardization (ISO) efficiency standards for amalgam separators (ISO 11143) developed in 1999 and updated in 2008. One approach to meet the standards in this rule is to install and operate an amalgam separator(s) compliant with one of these standards or their equivalent. These voluntary standard setting organizations established a standard for measuring amalgam separator efficiency by evaluating the retention of amalgam mercury using specified test procedures in a laboratory setting. They also include requirements for instructions for use and operation and maintenance.

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

EPA determined that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). While EPA was unable to perform a detailed environmental justice analysis because it lacks data on the location of POTWs to which dental discharges currently occur, this final rule will increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This final rule will reduce the amount of mercury from dental amalgam entering POTW's and eventually the nation's waters, to benefit all of society, including minority communities.

K. 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. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 441

Environmental protection, Dental, Dental office, Dentist, Mercury, Pretreatment, Waste treatment and disposal, Water pollution control.

Dated: June 9, 2017.

Michael H. Shapiro,

Acting Assistant Administrator.

Therefore, 40 CFR part 441 is amended by adding part 441 to read as follows:

PART 441—DENTAL OFFICE POINT SOURCE CATEGORY

Sec.

Authority: 33 U.S.C. 1251, 1311, 1314, 1316, 1317, 1318, 1342, and 1361. 42 U.S.C. 13101–13103.

§ 441.10 Applicability.

(a) Except as provided in paragraphs (c), (d), and (e) of this section, this part applies to dental dischargers.

(b) Unless otherwise designated by the Control Authority, dental dischargers subject to this part are not Significant Industrial Users as defined in 40 CFR part 403, and are not ''Categorical Industrial Users'' or ''industrial users subject to categorical pretreatment standards'' as those terms and variations are used in 40 CFR part 403, as a result of applicability of this rule.

(c) This part does not apply to dental dischargers that exclusively practice one or more of the following dental specialties: Oral pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics, periodontics, or prosthodontics.

(d) This part does not apply to wastewater discharges from a mobile unit operated by a dental discharger.

(e) This part does not apply to dental dischargers that do not discharge any amalgam process wastewater to a POTW, such as dental dischargers that collect all dental amalgam process wastewater for transfer to a Centralized Waste Treatment facility as defined in 40 CFR part 437.

(f) Dental Dischargers that do not place dental amalgam, and do not remove amalgam except in limited emergency or unplanned, unanticipated circumstances, and that certify such to

the Control Authority as required in § 441.50 are exempt from any further requirements of this part.

§ 441.20 General definitions.

For purposes of this part:

(a) *Amalgam process wastewater* means any wastewater generated and discharged by a dental discharger through the practice of dentistry that may contain dental amalgam.

(b) *Amalgam separator* means a collection device designed to capture and remove dental amalgam from the amalgam process wastewater of a dental facility.

(c) *Control Authority* is defined in 40 CFR 403.3(f).

(d) *Dental amalgam* means an alloy of elemental mercury and other metal(s) that is used in the practice of dentistry.

(e) *Dental Discharger* means a facility where the practice of dentistry is performed, including, but not limited to, institutions, permanent or temporary offices, clinics, home offices, and facilities owned and operated by Federal, state or local governments, that discharges wastewater to a publicly owned treatment works (POTW).

(f) *Duly Authorized Representative* is defined in 40 CFR 403.12(l)(3).

(g) *Existing Sources* means a dental discharger that is not a new source.

(h) *Mobile unit* means a specialized mobile self-contained van, trailer, or equipment used in providing dentistry services at multiple locations.

(i) *New Sources* means a dental discharger whose first discharge to a POTW occurs after July 14, 2017.

(j) *Publicly Owned Treatment Works* is defined in 40 CFR 403.3(q).

§ 441.30 Pretreatment standards for existing sources (PSES).

No later than July 14, 2020, any existing source subject to this part must achieve the following pretreatment standards:

(a) Removal of dental amalgam solids from all amalgam process wastewater by one of the following methods:

(1) Installation, operation, and maintenance of one or more amalgam separators that meet the following requirements:

(i) Compliant with either the American National Standards Institute (ANSI) American National Standard/ American Dental Association (ADA) Specification 108 for Amalgam Separators (2009) with Technical Addendum (2011) or the International Organization for Standardization (ISO) 11143 Standard (2008) or subsequent versions so long as that version requires amalgam separators to achieve at least a 95% removal efficiency. Compliance must be assessed by an accredited testing laboratory under ANSI's accreditation program for product certification or a testing laboratory that is a signatory to the International Laboratory Accreditation Cooperation's Mutual Recognition Arrangement. The testing laboratory's scope of accreditation must include ANSI/ADA 108–2009 or ISO 11143.

(ii) The amalgam separator(s) must be sized to accommodate the maximum discharge rate of amalgam process wastewater.

(iii) A dental discharger subject to this part that operates an amalgam separator that was installed at a dental facility prior to June 14, 2017, satisfies the requirements of paragraphs (a)(1)(i) and (ii) of this section until the existing separator is replaced as described in paragraph (a)(1)(v) of this section or until June 14, 2017, whichever is sooner.

(iv) The amalgam separator(s) must be inspected in accordance with the manufacturer's operating manual to ensure proper operation and maintenance of the separator(s) and to confirm that all amalgam process wastewater is flowing through the amalgam retaining portion of the amalgam separator(s).

(v) In the event that an amalgam separator is not functioning properly, the amalgam separator must be repaired consistent with manufacturer instructions or replaced with a unit that meets the requirements of paragraphs (a)(i) and (ii) of this section as soon as possible, but no later than 10 business days after the malfunction is discovered by the dental discharger, or an agent or representative of the dental discharger.

(vi) The amalgam retaining units must be replaced in accordance with the manufacturer's schedule as specified in the manufacturer's operating manual or when the amalgam retaining unit has reached the maximum level, as specified by the manufacturer in the operating manual, at which the amalgam separator can perform to the specified efficiency, whichever comes first.

(2) Installation, operation, and maintenance of one or more amalgam removal device(s) other than an amalgam separator. The amalgam removal device must meet the following requirements:

(i) Removal efficiency of at least 95 percent of the mass of solids from all amalgam process wastewater. The removal efficiency must be calculated in grams recorded to three decimal places, on a dry weight basis. The removal efficiency must be demonstrated at the maximum water flow rate through the device as established by the device manufacturer's instructions for use.

(ii) The removal efficiency must be determined using the average performance of three samples. The removal efficiency must be demonstrated using a test sample of dental amalgam that meets the following particle size distribution specifications: 60 percent by mass of particles that pass through a 3150 μm sieve but which do not pass through a 500 μm sieve, 10 percent by mass of particles that pass through a 500 μm sieve but which do not pass through a 100 μm sieve, and 30 percent by mass of particles that pass through a 100 μm sieve. Each of these three specified particle size distributions must contain a representative distribution of particle sizes.

(iii) The device(s) must be sized to accommodate the maximum discharge rate of amalgam process wastewater.

(iv) The devices(s) must be accompanied by the manufacturer's manual providing instructions for use including the frequency for inspection and collecting container replacement such that the unit is replaced once it has reached the maximum filling level at which the device can perform to the specified efficiency.

(v) The device(s) must be inspected in accordance with the manufacturer's operation manual to ensure proper operation and maintenance, including confirmation that amalgam process wastewater is flowing through the amalgam separating portion of the device(s).

(vi) In the event that a device is not functioning properly, it must be repaired consistent with manufacturer instructions or replaced with a unit that meets the requirements of paragraphs (a)(2)(i) through (iii) of this section as soon as possible, but no later than 10 business days after the malfunction is discovered by the dental discharger, or an agent or representative of the dental discharger.

(vii) The amalgam retaining unit(s) of the device(s) must be replaced as specified in the manufacturer's operating manual, or when the collecting container has reached the maximum filling level, as specified by the manufacturer in the operating manual, at which the amalgam separator can perform to the specified efficiency, whichever comes first.

(viii) The demonstration of the device(s) under paragraphs (a)(2)(i) through (iii) of this section must be documented in the One-Time Compliance Report.

(b) Implementation of the following best management practices (BMPs):

(1) Waste amalgam including, but not limited to, dental amalgam from chair-side traps, screens, vacuum pump filters, dental tools, cuspidors, or collection devices, must not be discharged to a POTW.

(2) Dental unit water lines, chair-side traps, and vacuum lines that discharge amalgam process wastewater to a POTW must not be cleaned with oxidizing or acidic cleaners, including but not limited to bleach, chlorine, iodine and peroxide that have a pH lower than 6 or greater than 8.

(c) All material is available for inspection at EPA's Water Docket, EPA West, 1301 Constitution Avenue NW., Room 3334, Washington, DC 20004, Telephone: 202–566–2426, and is available from the sources listed below.

(1) The following standards are available from the American Dental Association (ADA), 211 East Chicago Ave., Chicago IL 60611–2678, Telephone 312–440–2500, *http://www.ada.org.*

(i) ANSI/ADA Specification No. 108:2009, American National Standard/American Dental Association Specification No. 108 Amalgam Separators. February 2009.

(ii) ANSI/ADA Specification No. 108:2009 Addendum, American National Standard/American Dental Association Specification No. 108 Amalgam Separators, Addendum. November 2011.

(2) The following standards are available from the American National Standards Institute (ANSI), 25 West 43rd Street, 4th Floor, New York, NY 10036, Telephone 212–642–4900, *http://webstore.ansi.org.*

(i) International Standard ISO 11143:2008, Dentistry—Amalgam Separators. Second edition, July 1, 2008.

(ii) [Reserved]

§ 441.40 Pretreatment standards for new sources (PSNS).

As of July 14, 2017, any new source subject to this part must comply with the requirements of § 441.30(a) and (b) and the reporting and recordkeeping requirements of § 441.50.

§ 441.50 Reporting and recordkeeping requirements.

(a) Dental Dischargers subject to this part must comply with the following reporting requirements in lieu of the otherwise applicable requirements in 40 CFR 403.12(b), (d), (e), and (g).

(1) *One-Time Compliance Report deadlines.* For existing sources, a One-Time Compliance Report must be submitted to the Control Authority no later than October 12, 2020, or 90 days after a transfer of ownership. For new sources, a One-Time Compliance Report must be submitted to the Control Authority no later than 90 days following the introduction of wastewater into a POTW.

(2) *Signature and certification.* The One-Time Compliance Report must be signed and certified by a responsible corporate officer, a general partner or proprietor if the dental discharger is a partnership or sole proprietorship, or a duly authorized representative in accordance with the requirements of 40 CFR 403.12(l).

(3) *Contents.* (i) The One-Time Compliance Report for dental dischargers subject to this part that do not place or remove dental amalgam as described at § 441.10(f) must include the: facility name, physical address, mailing address, contact information, name of the operator(s) and owner(s); and a certification statement that the dental discharger does not place dental amalgam and does not remove amalgam except in limited circumstances.

(ii) The One-Time Compliance Report for dental dischargers subject to the standards of this part must include:

(A) The facility name, physical address, mailing address, and contact information.

(B) Name(s) of the operator(s) and owner(s).

(C) A description of the operation at the dental facility including: The total number of chairs, the total number of chairs at which dental amalgam may be present in the resulting wastewater, and a description of any existing amalgam separator(s) or equivalent device(s) currently operated to include, at a minimum, the make, model, year of installation.

(D) Certification that the amalgam separator(s) or equivalent device is designed and will be operated and maintained to meet the requirements specified in § 441.30 or § 441.40.

(E) Certification that the dental discharger is implementing BMPs specified in § 441.30(b) or § 441.40(b) and will continue to do so.

(F) The name of the third-party service provider that maintains the amalgam separator(s) or equivalent device(s) operated at the dental office, if applicable. Otherwise, a brief description of the practices employed by the facility to ensure proper operation and maintenance in accordance with § 441.30 or § 441.40.

(4) *Transfer of ownership notification.* If a dental discharger transfers ownership of the facility, the new owner must submit a new One-Time Compliance Report to the Control Authority no later than 90 days after the transfer.

(5) *Retention period.* As long as a Dental Discharger subject to this part is in operation, or until ownership is transferred, the Dental Discharger or an agent or representative of the dental discharger must maintain the One-Time Compliance Report required at paragraph (a) of this section and make it available for inspection in either physical or electronic form.

(b) Dental Dischargers or an agent or representative of the dental discharger must maintain and make available for inspection in either physical or electronic form, for a minimum of three years:

(1) Documentation of the date, person(s) conducting the inspection, and results of each inspection of the amalgam separator(s) or equivalent device(s), and a summary of follow-up actions, if needed.

(2) Documentation of amalgam retaining container or equivalent container replacement (including the date, as applicable).

(3) Documentation of all dates that collected dental amalgam is picked up or shipped for proper disposal in accordance with 40 CFR 261.5(g)(3), and the name of the permitted or licensed treatment, storage or disposal facility receiving the amalgam retaining containers.

(4) Documentation of any repair or replacement of an amalgam separator or equivalent device, including the date, person(s) making the repair or replacement, and a description of the repair or replacement (including make and model).

(5) Dischargers or an agent or representative of the dental discharger must maintain and make available for inspection in either physical or electronic form the manufacturers operating manual for the current device.

[FR Doc. 2017–12338 Filed 6–12–17; 11:15 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, 80, 90, 97, and 101

[ET Docket No. 15–99; FCC 17–33]

WRC–12 Implementation Report and Order

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission implemented allocation changes from the World Radiocommunication Conference

(Geneva, 2012) (WRC–12) and updated its service rules. The Commission took this action to conform its rules, to the extent practical, to the decisions that the international community made at WRC–12. This action will promote the advancement of new and expanded services and provide significant benefits to the American public.

DATES: Effective July 14, 2017, except for amendments to §§ 97.3, 97.15(c), 97.301(b) through (d), 97.303(g), 97.305(c), and 97.313(k) and (l), which contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, that are not effective until approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date once OMB approves.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, 202–418–2450, *Tom.Mooring@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, ET Docket No. 15–99, FCC 17–33, adopted March 27, 2017, and released March 29, 2017. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The full text may also be downloaded at: *https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-33A1.pdf.* People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of Report and Order

1. On April 23, 2015, the Commission adopted a Notice of Proposed Rulemaking (WRC–12 NPRM) in this proceeding, 80 FR 38315, July 2, 2015. In this Report and Order (WRC–12 R&O), the Commission amended the Table of Frequency Allocations (Allocation Table) in § 2.106 of its rules and a number of related service rules to implement certain radio frequency (RF) allocation decisions from the Final Acts of the World Radiocommunication Conference (Geneva, 2012) (WRC–12 Final Acts). The following are the major actions that the Commission took to support non-Federal spectrum requirements:

- Allocated the 472–479 kHz band to the amateur service on a secondary basis and amended part 97 to provide for amateur service use of this band and of the 135.7–137.8 kHz band.
- Amended part 80 to authorize radio buoy operations in the 1900–2000 kHz band under a ship station license.
- Allocated eight frequency bands in the 4 to 44 MHz range to the radiolocation service for Federal and non-Federal use, limited to oceanographic radars. The Commission also amended part 90 to provide for licensing of oceanographic radars, and required those radars currently operating under an experimental license to conform their operations to the adopted rules within five years of the effective date of this Order.
- Reallocated the 156.7625–156.7875 MHz and 156.8125–156.8375 MHz bands to the mobile-satellite service (MSS) (Earth-to-space) on a primary basis for Federal and non-Federal use, limited to the reception of Automatic Identification Systems (AIS) broadcast messages from ships. The Commission also amended part 80 to permit ships to transmit AIS broadcast messages in these bands, and amended part 25 to permit MSS satellites to receive in these bands and in the existing AIS bands.
- Allocated the 5000–5091 MHz band to the aeronautical mobile (route) service (AM(R)S) on a primary basis for Federal and non-Federal use. AM(R)S use of the 5000–5030 MHz band extends the tuning range for the recently-established Aeronautical Mobile Airport Communications System (AeroMACS) that will support surface applications at airports. AM(R)S use of the 5030–5091 MHz band will support unmanned aircraft systems (UAS).

Discussion

2. In the *WRC–12 R&O,* the Commission amended Parts 2, 15, 25, 80, 90, and 97 of its rules to implement specific allocations from the *WRC–12 Final Acts* that affect a number of frequency bands between 8.3 kHz and 3000 GHz and to adopt related service rules. These actions are described in greater detail below.

A. Amateur Radio Use of the 135.7–137.8 kHz and 472–479 kHz Bands

3. As proposed in the *WRC–12 NPRM,* the Commission allocated the 472–479 kHz band to the amateur service on a secondary basis and limited the maximum equivalent isotropically radiated power (EIRP) of amateur stations using this band to five watts in the United States, except for that portion of Alaska that is within 800 kilometers of the Russian Federation's borders, where the maximum EIRP is limited to one watt.

4. The amateur service will share this band with Power Line Carrier (PLC) systems, which electric utility companies use and operate in the 9–490 kHz range under part 15 of the Commission's rules on an unprotected and non-interference basis with respect to authorized radio users. While the Utilities Telecom Council (UTC) objected to the Commission's allocation proposal on the basis that an increased interference potential between amateur operations and PLC systems could deprive utilities of the flexibility needed to deploy PLC systems, the amateur radio community supported this allocation as useful for improving technical knowledge on radio propagation and because they believed that co-existence with PLC systems is possible due to existing amateur service operations on frequencies near 500 kHz under experimental licenses that have not resulted in any interference complaints.

5. The Commission agreed that adding a secondary amateur service allocation to the 472–479 kHz band will provide new opportunities for amateur operators to experiment with equipment, techniques, antennas, and propagation phenomena. The 472–479 kHz band offers amateur service operators different propagation characteristics from the 135.7–137.8 kHz band, which was allocated on a secondary basis to amateur service in the *WRC–07 Report and Order.* Further, a secondary allocation to the amateur service harmonizes the United States and international allocations for this band and provide new opportunities for amateur service experimentation. At the same time, the Commission recognized the importance of PLC systems and their impact on utility safety, security and reliability of utility operations, and found that co-existence between PLC systems and amateur radio operations in these bands is possible under the service rules the Commission adopted in this Order.

6. As proposed in the *WRC–12 NPRM,* the Commission removed several allocations from the 135.7–137.8 kHz and 472–479 kHz bands. It deleted the non-Federal fixed service (FS) and maritime mobile service (MMS) allocations from the 135.7–137.8 kHz band because there are no non-Federal stations in the FS and MMS that are licensed to operate in this band, and because it found that any future requirements for non-Federal stations in the FS or MMS can be accommodated in other frequency bands. However, because there is some limited Federal use of this band, the Commission maintained the existing primary FS and

MMS allocations in the Federal Table. The Commission deleted the Federal MMS and aeronautical radionavigation service (ARNS) allocations and the non-Federal MMS allocation from the 472–479 kHz band. NTIA has not authorized any Federal stations in the ARNS or MMS to operate in the 472–479 kHz band, and there is only limited use of the non-Federal MMS allocation. Any future requirements for non-Federal MMS stations can be accommodated in other frequency bands. However, there are two non-Federal licensees that operate three public coast stations under their current licenses on a primary basis. The Commission grandfathered operation of these stations by amending § 80.357(b)(1) to limit the use of the 472–479 kHz band to public coast stations that were licensed as of the effective date of this *Report and Order* and by adding a footnote to the Table of Allocations that grandfathers the following licensees to operate public coast stations on a primary basis in the 472–479 kHz band pursuant to their current radio station authorization, subject to periodic renewals: Global HF Net LLC (call signs KFS and WNU) and New England Historical Radio Society, Inc. (call sign WNE).

7. The Commission adopted service rules for the amateur radio service in the 135.7–137.8 kHz (2200 meter band) and 472–479 kHz (630 meter band) bands that will ensure the compatibility of amateur radio operations and PLC systems that operate in these bands, and promote the shared use of these bands. Under these rules, electric utilities will not be required to modify existing PLC systems to accommodate amateur operations, and previously notified amateur stations will not be required to alter their operations to accommodate new or modified PLC operations.

8. As proposed, the Commission will permit amateur stations to operate in the 135.7–137.8 kHz and 472–479 kHz bands when separated by a specified distance from electric power transmission lines with PLC systems that use the same bands. To support the operations of both the amateur service and PLC systems in these bands, the Commission adopted a minimum horizontal separation distance of one kilometer between the transmission line and the amateur station when operating in these bands.

9. Regarding operations in the 135.7–137.8 kHz band, ARRL provided a technical analysis in ET Docket No. 12–338, which concluded that PLC systems ''will be sufficiently protected from amateur stations transmitting at an EIRP of 1 W with a separation distance of 1 km from the transmission lines carrying the PLC signals, beyond which there is no interference potential.'' UTC agreed with this conclusion and supported a separation distance of at least one kilometer for amateur operation in this band. While ARRL preferred that amateur stations have the option to be located closer to the transmission lines with PLC systems and recommended a notification procedure to address any potential interference to PLC systems, the Commission found that a one kilometer separation distance reasonably ensures that PLC systems and amateur radio stations are unlikely to experience interference. In addition, establishing a zone where amateur use is not authorized will simplify and streamline the process for determining whether an amateur station can transmit in these bands when in proximity to transmission lines upon which PLC systems operate.

10. The Commission adopted the same separation distance for amateur operations in the 472–479 kHz band, as it did for the 135.7–137.8 kHz band, since these bands share the same considerations for co-existence of the two uses.

11. The Commission restricted amateur service operations to fixed locations and prohibited mobile operations in these bands. This restriction will ensure that amateur stations remain at the locations specified in their notification and comply with the separation distance requirements discussed below. UTC and some amateur service commenters supported this restriction. The Commission will allow temporary fixed use at sites that meet its technical rules and follow its notification requirements. In other words, the location of the amateur station must not be located within one kilometer of PLC systems and its operations must be in accordance with part 97 rules.

12. The Commission required amateur operators to notify UTC of the location of their proposed station prior to commencing operations, to confirm that the station is not located within the one kilometer separation distance. Even though several amateur service commenters claimed that they can readily identify transmission lines and compute the separation distance, the Commission found that transmission lines are not always readily identifiable. Further, amateur operators may not be able to determine whether PLC systems operate in the relevant bands on the subject transmission lines. The notification requirement will entail notifying UTC of the operator's call sign and coordinates of the proposed station's location for confirmation that the location is outside the one kilometer separation distance, or the relevant PLC system is not transmitting on the requested bands. UTC, which maintains a database of PLC systems must respond to the notification within 30 days if it objects. If UTC raises no objection, amateur radio operators may commence operations on the band identified in their notification. The Wireless Telecommunications Bureau will issue a public notice providing the details for filing notifications with UTC.

13. The notification procedures the Commission adopted seek to strike a balance between amateur operations used for experimental purposes and PLC operation used by electric utilities for the reliability and security of electric service to the public. These procedures are the least burdensome considering the Commission seeks to ensure that no potential interference occurs from these two uses. A simple notification to UTC with a 30-day waiting period does not appear to be burdensome. Amateur operations can commence as soon as that period expires. While ARRL sought direct access to the PLC database, the Commission noted that UTC has control of the PLC database which can be updated, and found no reason to mandate its release to another party especially considering the sensitive nature of information it contains.

14. If an electric utility seeks to deploy a new or modified PLC system on a transmission line that is within one kilometer of a previously coordinated amateur station, the electric utility must employ a frequency in the 9–490 kHz range that has not been included in the amateur station's notification, as ARRL suggests. If the previously coordinated amateur station no longer operates in the band, the electric utility may deploy a PLC system in that band.

15. As discussed in the *WRC–12 NPRM,* the Commission adopted maximum EIRP limits and transmitter power limits for the new amateur service bands. Amateur stations may operate in the 135.7–137.8 kHz band with a maximum radiated power of one watt EIRP. The Commission found that amateur stations operating in the 135.7–137.8 kHz band should be subject only to the general part 97 limit of 1.5 kW peak envelope power (PEP). The Commission found it unnecessary to limit the transmitter power beyond what it is already provided for in its rules, because antennas used in this frequency band are highly inefficient in converting the RF power delivered to the antenna terminals.

16. The Commission also adopted the power limits proposed in the *WRC–12 NPRM* for amateur stations operating in

the 472–479 kHz band. For such stations, the maximum radiated power will be five watts EIRP, except for stations located in the portion of Alaska that is within 800 kilometers of the Russian Federation, where the EIRP will be limited to one watt. The Commission also limited the transmitter power for amateur radio operations in the 472–479 kHz band to 500 watts PEP; provided, however, that the resulting radiated power does not exceed five watts EIRP. In other words, it may be necessary to reduce transmitter power below 500 watts PEP to avoid exceeding the five watts EIRP limit.

17. As discussed in the *WRC–12 NPRM,* the Commission required that the antennas used to transmit in these bands not exceed 60 meters in height above ground level, as ARRL proposed. The adoption of this height restriction will aid in the sharing of these amateur service bands with PLC systems by limiting the potential for amateurs' signals to exceed the adopted EIRP limits with longer, higher gain antennas, and could reduce the number of antenna structures that must comply with the Federal Aviation Administration notification and obstruction marking and lighting requirements in part 17 of the Commission's rules.

18. As discussed in the *WRC–12 NPRM,* the Commission made these bands available for Amateur Extra, Advanced and General Class licensees. Consistent with its proposal in the *WRC–12 NPRM* and with the existing rules in § 97.305 for the frequency bands below 30 MHz, the Commission authorized amateur stations to transmit the following emission types throughout the new amateur bands: CW (international Morse code telegraphy), RTTY (narrow-band direct-printing telegraphy), data, phone, and image emissions. These emission types provide amateur operators with maximum flexibility, and the Commission found that additional restrictions would needlessly hinder experimentation.

19. The Commission amended § 97.303 to list the radiocommunication services that must be protected from harmful interference. Specifically, amateur stations transmitting in the 135.7–137.8 kHz band must not cause harmful interference to, and must accept interference from, stations authorized by the United States Government in the fixed and maritime mobile services and stations authorized by other nations in the fixed, maritime mobile, and radionavigation services. Amateur stations transmitting in the 472–479 kHz band must not cause harmful interference to, and must accept interference from, stations authorized by the Commission in the maritime mobile service and stations authorized by other nations in the maritime mobile and aeronautical radionavigation services.

20. The Commission declined to prohibit automatically controlled stations from operating in these bands. Further, as proposed in the *WRC–12 NPRM,* the Commission added definitions for the terms effective radiated power, isotropically radiated power and LF (low frequency) in section 97.3 of its rules. Finally, the Commission declined to permit previously licensed experimental stations—some of which have been authorized with significantly more radiated power than the adopted EIRP limits for these new amateur service bands—to communicate with amateur stations operating in these bands. Amateur operations in these bands currently authorized under experimental licenses should transition their operations in accordance with the adopted rules and not circumvent such rules by use of experimental licenses.

B. Radio Buoys Operating in the 1900–2000 kHz Band

21. The Commission allocated the 1900–2000 kHz band to the MMS on a primary basis for non-Federal use in ITU Regions 2 and 3, and limited the use of this allocation to radio buoys on the open sea and the Great Lakes. Section 80.5 of the Commission's rules define open sea as the water area of the open coast seaward of the ordinary low-water mark, or seaward of inland waters. This allocation addresses the limited situations where radio buoys cannot be authorized under the radiolocation service allocation because of newer technology that uses features like GPS rather than radiodetermination.

22. In the *WRC–07 R&O,* the Commission recognized the public benefit associated with the use of radio buoys by the U.S. commercial fishing fleet, and in the *WRC–12 NPRM* the Commission proposed revisions to its rules that would provide radio buoy operators with a legitimate path to operate. In doing so, the Commission proposed to geographically limit the use of the MMS allocation, and the existing radiolocation service allocation, to radio buoys used by the U.S. commercial fishing fleet on the open sea, but sought comment on whether the geographic area should be extended to include the Chesapeake Bay, Great Lakes, or other inland waters.

23. The Commission recognized ARRL's concerns that radio buoy manufacturers will not be able to ensure where fishing vessels will be using radio buoys. However, the Commission believes that amateur radio and radio buoys can continue to share this frequency band as they have done for many years. Because radio buoys are low-power and narrow-bandwidth devices, while amateur stations tend to use much higher power, the Commission believes that they can continue to be accommodated with minimal impact on amateur radio operations. Any intermittent interference amateur operators may receive in the 1900–2000 kHz band from lower-powered radio buoys is not expected to significantly hamper amateur operations in the band because amateur operators can readily tune around these narrow radio buoy signals and because the adjacent 1800–1900 kHz band is allocated exclusively for amateur radio use. Although the Commission had requested comment on rules that would have effectively permitted radio buoys to operate on any waters where the United States exercises sovereignty, the Commission was persuaded by ARRL's comments to adopt final rules that are better tailored to the places where the commercial fishing fleet can make reasonable and productive use of radio buoys. The Commission thus found it in the public interest to permit commercial fishing vessels to use these buoys on the open sea and the Great Lakes.

24. Also, the Commission amended, as proposed, footnote NG92 to provide that the co-primary services in the 1900–2000 kHz band are protected from harmful interference only to the extent that the offending station is not operating in accordance with the technical rules. This statement clarifies that co-primary allocations in the 1900–2000 kHz band (*i.e.,* the amateur, radiolocation, and maritime mobile services) share the same type of interference protection—one that protects only from a violation of the technical rules. Radio buoys and amateur stations have co-equal status and therefore have the same level of interference protection from each other.

25. The Commission declined to make additional spectrum available for radio buoy use. In the *WRC–12 NPRM* the Commission sought comment on alternative approaches that would allow continued radio buoy use by the U.S. commercial fishing fleet, including allocating additional spectrum. Several amateur radio commenters requested that new radio buoys be transitioned to another nearby frequency band. However, the Commission did not agree that additional spectrum is necessary for radio buoy operations because the

1900–2000 kHz band can be successfully shared with amateurs and the number of radio buoys does not appear to be significant enough to require a different allocation. In addition, as stated above, the 1800–1900 kHz band is already allocated for exclusive amateur use, and the record does not indicate that this exclusive allocation is insufficient and that the public interest would be served by creating an additional exclusive allocation for amateur use at 1900–2000 kHz. Therefore, it appeared unnecessary for the Commission to make additional spectrum available for exclusive amateur use at this time by relocating low-power radio buoys out of the 1900–2000 kHz band.

26. The Commission amended part 80 of its rules to authorize the use of frequencies in the 1900–2000 kHz band for radio buoy operations under a ship station license provided that the use of these frequencies is related to commercial fishing operations, the transmitter output power does not exceed 8 watts, and the station antenna height does not exceed 4.6 meters above sea level in a buoy station or 6 meters above the mast of the ship on which it is installed.

27. In the *WRC–12 NPRM,* the Commission proposed to authorize buoy stations in the 1900–2000 kHz band, provided that the output power does not exceed 10 watts and the station antenna height does not exceed 4.6 meters above sea level in a buoy station or 6 meters above the mast of the ship on which it is installed. While part 90 did not establish power limits in this band, no equipment authorization has been sought with an output power over 8 watts. To address some of the amateur community's concerns over potential interference from these radio buoys, the Commission limited radio buoys transmitter output power to 8 watts.

28. The Commission found it unnecessary to provide the proposed six-month phase-out period for part 90 equipment authorizations considering that no applications for radio buoy equipment operating in the 1900–2000 kHz band have been submitted since the adoption of the *WRC–12 NPRM.* Hence, applications for equipment authorization of radio buoys must meet the new part 80 rules, as of the effective date of this Order. Also as proposed, the Commission grandfathered radio buoys authorized under § 90.103(b) prior to the cutoff date so they may continue to be manufactured, imported, and marketed under the previously approved equipment authorization.

C. Aviation Services Uses in the 5000–5150 MHz Band

29. The Commission took actions in support of aeronautical mobile (route) service (AM(R)S) surface applications at airports in the 5000–5030 MHz band and unmanned aircraft systems (UAS) in the 5030–5091 MHz band. As proposed, the Commission allocated the 5000–5030 MHz bands to the AM(R)S on a primary basis for Federal and non-Federal use, for systems operating in accordance with international aeronautical standards, limited to surface applications at airports (*i.e.,* AeroMACS). AeroMACS refers to a collection of high data rate wireless networks that are used for airport surface operations (*i.e.* ground-to-ground communications) to provide broadband communications between aircraft and other ground vehicles, as well as between critical fixed assets. AeroMACS is designed to support a wide variety of services and applications, including Air Traffic Control/Air Traffic Management and infrastructure functions, as well as airline and airport operations.

30. In the *WRC–07 R&O,* the Commission made the globally harmonized 5091–5150 MHz band available for AeroMACS, expecting that it will be the main frequency band for deployment of AeroMACS. The Commission found that there is a need for additional spectrum, especially at the nation's busiest airports. This action extended the tuning range for AeroMACS to include the 5000–5030 MHz band in the United States.

31. The Commission allocated the 5030–5091 MHz band to the AM(R)S on a primary basis for Federal and non-Federal use and added international footnote 5.443C to this band limiting the use to internationally standardized aeronautical systems and setting limits for unwanted emissions from AM(R)S stations to adjacent band radionavigation-satellite service (RNSS) downlinks to an EIRP density of -75 dBW/MHz. The *WRC–12 NPRM* proposal, which was based on the *U.S. Proposals for WRC–12,* noted that the 5030–5091 MHz band would be appropriate to satisfy the terrestrial, line-of-sight, spectrum requirements for command and control of UAS in non-segregated airspace. The Commission adopted the AM(R)S allocation to support the anticipated growth of UAS and promote their safe operation. Technical and operational rules relating to altitude, weight, or other requirements will be addressed in the service rules for this band, which will be promulgated in a separate proceeding.

32. As proposed, the Commission added an entry in the U.S. Table that reflects the primary aeronautical mobile-satellite (R) service (AMS(R)S) allocation in the 5000–5150 MHz band, previously reflected in a footnote. Further, the Commission adopted two international footnotes that limit the AMS(R)S allocation to internationally standardized aeronautical systems.

D. Protecting Passive Sensors in the 86–92 GHz Band

33. The Commission did not adopt proposed footnote US162, which would have encouraged fixed service operators transmitting in the adjacent bands (81–86 GHz and 92–94 GHz) to take all reasonable steps to ensure that their unwanted emissions power in the 86–92 GHz passive band does not exceed WRC–12's non-mandatory unwanted emissions levels.

34. The 86–92 GHz band is allocated to the Earth exploration-satellite service (EESS) (passive), radio astronomy service, and space research service (passive). WRC–12 sought to protect the EESS passive sensors that receive in this band, proposed non-mandatory protection requirements from out-of-band emissions from active services in adjacent bands and ''urge[d] administrations to take all reasonable steps to ensure'' that such emissions do not exceed the recommended maximum levels. The *WRC–12 NPRM* proposed the adoption of a footnote that would ''*encourage* operators of fixed stations [. . .] to take all reasonable steps to ensure that their unwanted emissions in the 86–92 GHz does not exceed WRC–12's non-mandatory unwanted emission levels'' (*emphasis added*).

35. The Commission recognized that the proposed footnote US162 provides emission limits that are significantly more stringent than those in part 101 and concluded that adoption of the footnote would be confusing for incumbent users of the adjacent bands and would not provide any meaningful protection for the EESS passive sensors in the 86–92 GHz band beyond that already required under part 101 of the rules. Further, the adoption of the underlying emission limits for the protection of the EESS passive sensors in the 86–92 GHz band, an action supported by CORF, would require a proceeding in order to develop a record that could support changes to the existing rules. The current proceeding does not provide the appropriate proper framework to address such changes. In addition, there are other proceedings underway addressing part 101 emission

mask rules governing fixed operations in these bands that may be better suited in examining these considerations.

E. Passive Use of Bands Above 275 GHz

36. As proposed, the Commission extended the U.S. Table of Allocations past the 275–1000 GHz band to 3000 GHz. These bands are ''not allocated'' to specific services, though passive services such as the EESS, space research service (SRS), and radio astronomy service already utilize portions of the 275–3000 GHz range for scientific observation. The Commission adopted a revised footnote US565 which incorporates language of the new international footnote 5.565 and of the proposed footnote US565.

37. WRC–12 revised international footnote 5.565 to identify an additional 226 gigahertz of spectrum for passive spaceborne sensor use in the 275–990 GHz range. The footnote further urges administrations, when making those frequencies available for active service applications to take all practicable steps to protect these passive services from harmful interference, until the date when the Table of Frequency Allocations is established in the 275–1000 GHz frequency range. CORF, in its comments, generally supported the sharing of frequency allocations where practical, stating that technical factors associated with radio transmission in these high frequencies may well support shared use in many cases. However, CORF objected to the proposed U.S. footnote because it appears to be at odds with international footnote 5.565's ''explicit goal of protecting passive uses.''

38. The Commission did not agree with CORF's interpretation and was concerned that the text of international footnote 5.565 could be construed as placing a reservation for future passive service allocations in the U.S. Table, which would inhibit development of other radiocommunication services in this spectrum. Consistent with its tentatively conclusion in the *WRC–12 NPRM,* the Commission found that it is premature to establish a specific allocation in the U.S. Table in this frequency range and that it is unnecessary to place spectrum use restrictions in these frequencies. Instead, maintaining spectrum flexibility in these bands will encourage the development of new uses in the future.

39. The Commission recognized that the 275–3000 GHz frequency range is used—and may be used more extensively in the future—for experimentation with, and development of, an array of active service applications. Because international footnote 5.565 can be interpreted as establishing an ''allocation'' for passive uses only, the Commission found that the text of this international footnote must be clarified. In particular, the Commission was not prepared to determine whether the frequency bands identified for use by passive service applications in international footnote 5.565 are entitled to interference protection from a yet-to-be proposed active service. For these reasons, the Commission revised existing footnote US565 to identify expected passive uses of the 275–1000 GHz range and to clarify that this footnote does not establish any priority of use in the U.S. Table, and does not preclude or constrain any active service use or future allocation of frequency bands in the 275–3000 GHz range. This clarifying text is sufficient, given that passive and active services can share frequencies above 275 GHz without constraints, especially considering the atmospheric absorption at these frequencies and the narrowness of the antenna beamwidths, which make sharing among different services possible.

F. Rulemaking Proposals That Did Not Receive Any Specific Comments

40. The Commission amended §§ 2.100, 2.102, 2.106, 80.215, 80.373, 80.871, 90.7, 90.103, and 90.425 of its rules to implement proposals in the *WRC–12 NPRM* that were not addressed by any of the commenters. It found these proposals implement important U.S. policy goals and serve the public interest for the reasons stated in the *WRC–12 NPRM.*

41. *Passive Systems for Lightning Detection (8.3–11.3 kHz).* The Commission allocated the 8.3–9 kHz and 9–11.3 kHz bands to the meteorological aids service on a primary basis for Federal and non-Federal use. The Commission also adopted international footnote 5.54A, limiting use of these frequency bands to passive use only. Consequently, the Commission revised Section 2.102(a) to require that the assignment of frequencies between 8.3 kHz and 275 GHz be in accordance with the Allocation Table.

42. *Maritime Mobile Service Use of the Frequency 500 kHz.* The Commission allocated the 495–505 kHz band to the maritime mobile service, removes the aeronautical mobile and land mobile service portions of the existing allocation, and removes the existing distress and calling restriction.

43. *Oceanographic Radar Applications in the 4–44 MHz Range.* The Commission allocated seven frequency bands (4.438–4.488 MHz, 5.25–5.275 MHz, 16.1–16.2 MHz, 24.45–24.65 MHz, 26.2–26.42 MHz, 41.015–41.665 MHz, and 43.35–44 MHz) to the radiolocation service (RLS) on a primary basis for Federal and non-Federal use, and allocate the 13.45–13.55 MHz band to the RLS on a secondary basis for Federal and non-Federal use. The Commission added footnotes to the U.S. Table that prohibit oceanographic radars transmitting in these bands from causing harmful interference to, or claiming protection from, existing and future stations in the incumbent fixed and mobile services. The Commission also raised to primary status the secondary mobile except aeronautical mobile service allocation in the 5.25–5.275 MHz band, so that existing and future stations in this service can also be protected from interference from oceanographic radars. Next, the Commission amended part 90 of its rules by adding the oceanographic radar bands to the Radiolocation Service Frequency Table and took other associated actions that incorporate WRC–12's operational requirements for oceanographic radars and allowed licensees of existing experimental stations to apply for part 90 licenses. Finally, the Commission required that all oceanographic radar licensees currently operating under part 5 of the rules transition their operations to frequencies within an allocated band within five years of the effective date of this *Report and Order.*

44. *Improved Satellite-AIS Capability.* To improve satellite detection of messages from maritime Automatic Identification Systems (AIS), the Commission reallocated two bands—156.7625–156.7875 MHz (AIS 3) and 156.8125–156.8375 MHz (AIS 4)—to the mobile-satellite service (MSS), restricted to Earth-to-space (uplink) operations, on a primary basis for Federal and non-Federal use. The Commission revised footnote US52 to restrict the use of these MSS uplink allocations to the reception of long-range AIS broadcast messages from ships. The Commission removed the primary MMS allocation from these bands and amends the relevant rules to remove references to these MMS frequencies. The Commission further revised footnote US52 to grandfather the single MMS licensee (BKEP Materials, LLC) until the expiration date of its licenses (August 26, 2019). The Commission amended Section 80.203 to clarify that it will no longer accept applications for certification of non-AIS VHF radios that include channels 75 (156.775 MHz) and 76 (156.825 MHz) as of the effective date of this *Report and*

Order. Finally, the Commission added to Section 80.393 the simplex channels at 156.775 MHz (AIS 3) and 156.825 MHz (AIS 4) and it added to Section 25.202 these bands and the existing AIS bands (161.9625–161.9875 MHz and 162.0125–162.0375 MHz).

45. *Allocating the 22.55–23.15 GHz and 25.5–27 GHz Bands to the Space Research Service.* The Commission amended the U.S. Table to allocate the 22.55–23.15 GHz band to the SRS (Earth-to-space) on a primary basis for both Federal and non-Federal use and to add a reference to international footnote 5.532A. In addition, the Commission added a primary non-Federal SRS (space-to-Earth) allocation to the companion 25.5–27 GHz band, which currently is allocated to the SRS (space-to-Earth) only for Federal use.

46. *Deletion of Aeronautical Mobile Service from the 37–38 GHz Band.* The Commission amended the U.S. Table to limit the existing primary mobile service allocation in the 37–38 GHz band only to the land mobile and maritime mobile services. In other words, this primary allocation entry will read ''MOBILE except aeronautical mobile'' service.

47. *Allocating the 7850–7900 MHz Band to the Federal Meteorological-Satellite Service.* The Commission allocated the 7850–7900 MHz band to the meteorological satellite-service (MetSat) (space-to-Earth) on a primary basis for Federal use and adopt international footnote 5.461B restricting use of the allocation to non-geostationary systems. As consequence of this action, the larger 7750–7900 MHz band is now allocated to the fixed service and the meteorological satellite-service (space-to-Earth) on a primary basis for Federal use, and per international footnote 5.461B, MetSat use of this band is limited to non-geostationary satellite systems.

48. *Allocating the 15.4–15.7 GHz Band to the Federal Radiolocation Service.* The Commission allocated the 15.4–15.7 GHz band to the RLS on a primary basis for Federal use. The Commission also added international footnotes 5.511E and 5.511F to the Federal Table, which require that RLS stations operating in the 15.4–15.7 GHz band not cause harmful interference to, or claim protection from, stations operating in the aeronautical radionavigation service, and not exceed the power flux-density level of −156 dB(W/m^2) in a 50 MHz bandwidth in the 15.35–15.4 GHz band, at any radio astronomy observatory site for more than 2 percent of the time. Also, the Commission adopted footnote US511E, which limits RLS use of the 15.4–15.7 GHz band to Federal systems requiring a necessary bandwidth greater than 1600 MHz that cannot be accommodated within the band 15.7–17.3 GHz, except that radar systems requiring use of the band 15.4–15.7 GHz for testing, training, and exercises may be accommodated on a case-by-case basis.

49. *Other Administrative Matters.* The Commission adopted its proposal to update footnote NG49 and renumbered this footnote as NG16. Specifically, the Commission no longer lists the individual frequencies within the footnote, and it removed the geographic restriction from this footnote. These updates will bring the U.S. Table in line with existing service rules. The Commission also amended Section 2.100 of its rules to state that the ITU *Radio Regulations,* Edition of 2012, have been incorporated to the extent practicable in part 2.

Final Regulatory Flexibility Certification

50. The Regulatory Flexibility Act of 1980, as amended (RFA) [1] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' [2] The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [3] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[4] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5]

51. In this *Report and Order,* the Commission took three actions that will cause a direct cost to regulated entities. First, the Commission required that all commercial fishing vessels that operate radio buoys in the 1900–2000 kHz band be authorized under a ship radio station license. Based on the comments of ITM Marine in ET Docket No. 12–338, there are between 750 and 1000 active commercial fishing vessels that operate such radio buoys.[6] The Commission expects that some of these fishing vessels are owned by small businesses that do not already have a ship radio station license. Because the total cost for a ship radio station license is $215, the Commission found that the direct cost of this requirement will be far less than one percent of revenue for any future small business licensee.

52. Second, the Commission required that oceanographic radars, which currently operate under experimental license authority, operate in accordance with the adopted part 90 rules within five years of the effective date of this *Report and Order.* Based on its review of licenses in the Commission's Experimental Licensing System, the adopted rules will affect nine universities and one manufacturer. Based on information provided by the National Oceanic and Atmospheric Administration, the Commission believes that, in most cases, existing oceanographic radars can transition to the nearest allocated band without major hardware modification.[7] The Commission noted that only two of these universities are private institutions (Cornell University and San Francisco University) that meet the definition of small organization, *see* 5 U.S.C. 601(4). The Commission further noted that there ''are 1,600 private, nonprofit institutions nationwide,'' [8] and the great majority of these are clearly small organizations. Therefore, the Commission found that requiring oceanographic radars to operate under the adopted part 90 rules will impact far less than one percent of private,

[1] The RFA, *see* 5 U.S.C. 601 *et. seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[5] Small Business Act, 15 U.S.C. 632.

[6] *See Amendment of Parts 1, 2, 15, 74, 78, 87, 90, and 97 of the Commission's Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Geneva, 2007) (WRC–07), Other Allocation Issues, and Related Rule Updates,* ET Docket 12–338, Comments of Steve Beaver (March 4, 2013) at 1 (''We estimate that there are at least 500 active [high seas migratory species fishing] vessels, and possible 250–500 more in the USA, which are using radio buoys.'').

[7] *See* National Oceanic and Atmospheric Administration, Summary of WRC–12 HF Radar Frequency Outcomes (Jan. 26, 2012) (''In most cases, transitioning to the nearest allocated band should not require major hardware modification''), *http://www.ioos.noaa.gov/hfradar/summary_wrc_12outcomes.pdf.*

[8] *See* ''Quick Facts About Private Colleges'' by the National Association of Independent Colleges and Universities (*http://www.naicu.edu/about/page/quick-facts-about-private-colleges#Institution*).

nonprofit academic institutions that are small organizations. The Commission also believes that the single licensee that is a manufacturer (CODAR Ocean Sensor, Ltd.) will be positively impacted because it has committed to ''produce, sell, and support [oceanographic radars] that operate in all of the ITU allocated bands and conform to any local regulations.'' [9]

53. Third, the Commission reallocated the 156.7625–156.7875 MHz and 156.8125–156.8375 MHz bands from MMS to the mobile-satellite service, and requires that MMS operations in these bands cease as of August 26, 2019. There is a single licensee (BKEP Materials, LLC) authorized to operate three private coast stations in these bands. Based on its review of licenses in the Commission's Universal Licensing System, the Commission has issued 2770 licenses for private coast stations to operate in the 156–157.1 MHz band. The Commission estimated that at least 1000 of these licensees are small entities. Therefore, the Commission found that these reallocations will impact far less than one percent of the total number of small entities operating in the 156–157.1 MHz band.

54. Therefore, the Commission certified that the requirements of this *Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this *Report and Order* including this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the *Report and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

Paperwork Reduction Analysis

55. This *Report and Order* contains new information collections subject to the PRA, Public Law 104–13. It will be submitted to OMB for review under Section 3507(d) of the PRA. The Commission will publish a separate notice in the **Federal Register** inviting comment on the new information collection requirements adopted herein. The requirements will not go into effect until OMB has approved it and the Commission has published a notice announcing the effective date of the information collection requirements. In this document, the Commission has assessed the potential effects of the prior notification requirement for amateur service operations in the 135.7–137.8 kHz and 472–479 kHz bands, and found that there will in the great majority of instances be a *de minimis* paperwork burden for amateur service licensees resulting from the collection of information by the Utilities Telecom Council. Finally, the Commission noted that, because ''small entities,'' as defined in the Regulatory Flexibility Act of 1980, as amended, are not persons eligible for licensing in the amateur service, this rule does not apply to ''small entities.'' Therefore, the requirement in the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), that the Commission seek to further reduce this information requirement burden for small business concerns with fewer than 25 employees does not apply.

Congressional Review Act

56. The Commission will send a copy of this *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).

Ordering Clauses

57. Pursuant to sections 1, 4, 301, 302, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 302a, and 303, this *Report and Order* is hereby *adopted* and the Commission's rules *are amended* as set forth below.

58. The rule amendments adopted herein *shall be effective* 30 days after date of **Federal Register** publication of the *Report and Order,* except for §§ 97.3, 97.15(c), 97.301(b) through (d), 97.303(g), 97.305(c), and 97.313(k) and (l), because § 97.303(g)(2) contains a new information collection requirement that requires approval by OMB under the PRA. These rules sections *shall be effective* after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

59. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order,* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

60. *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 General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

[9] *See* ''Outcome of the 2012 World Radiocommunication Conference: Oceanographic HF Radars Officially Recognized by ITU,'' March 2012, by CODAR Ocean Sensors (*http://www.codar.com/news_03_2012_2.shtml*).

List of Subjects

47 CFR Part 2

Radio, Telecommunications.

47 CFR Parts 15, 80, 90, and 97

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 15, 25, 80, 90, and 97 as follows:

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. Revise § 2.100 to read as follows:

§ 2.100 International regulations in force.

The ITU *Radio Regulations,* Edition of 2012, have been incorporated to the extent practicable in this part.

■ 3. In § 2.102, revise paragraph (a) to read as follows:

§ 2.102 Assignment of frequencies.

(a) Except as otherwise provided in this section, the assignment of frequencies and bands of frequencies to all stations and classes of stations and the licensing and authorizing of the use of all such frequencies between 8.3 kHz and 275 GHz, and the actual use of such frequencies for radiocommunication or for any other purpose, including the transfer of energy by radio, shall be in accordance with the Table of Frequency Allocations in § 2.106.

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■ 4. In § 2.106, the Table of Frequency Allocations is amended as follows:

■ a. Pages 1–2, 4–5, 7–8, 11–13, 15–20, 23–24, 41–42, 45, 51, 53–54, 57, and 67–68 are revised.

■ b. In the list of United States (US) Footnotes, footnotes US52, US231, US246, and US565 are revised; footnotes US115, US132A, and US511E are added; and footnote US367 is removed.

■ c. In the list of non-Federal Government (NG) Footnotes, footnotes NG8 and NG16 are added, footnote NG49 is removed, and footnote NG92 is revised.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

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Table of Frequency Allocations		0-137.8 kHz (VLF/LF)			Page 1
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
Below 8.3 (Not Allocated) 5.53 5.54			Below 8.3 (Not Allocated) 5.53 5.54		
8.3-9 METEOROLOGICAL AIDS 5.54A 5.54B 5.54C			8.3-9 METEOROLOGICAL AIDS 5.54A		
9-11.3 METEOROLOGICAL AIDS 5.54A RADIONAVIGATION			9-11.3 METEOROLOGICAL AIDS 5.54A RADIONAVIGATION US18 US2		
11.3-14 RADIONAVIGATION			11.3-14 RADIONAVIGATION US18 US2		
14-19.95 FIXED MARITIME MOBILE 5.57 5.55 5.56			14-19.95 FIXED MARITIME MOBILE 5.57 US2	14-19.95 Fixed US2	
19.95-20.05 STANDARD FREQUENCY AND TIME SIGNAL (20 kHz)			19.95-20.05 STANDARD FREQUENCY AND TIME SIGNAL (20 kHz) US2		
20.05-70 FIXED MARITIME MOBILE 5.57			20.05-59 FIXED MARITIME MOBILE 5.57 US2	20.05-59 FIXED US2	
			59-61 STANDARD FREQUENCY AND TIME SIGNAL (60 kHz) US2		
5.56 5.58			61-70 FIXED MARITIME MOBILE 5.57 US2	61-70 FIXED US2	
70-72 RADIONAVIGATION 5.60	70-90 FIXED MARITIME MOBILE 5.57 MARITIME RADIONAVIGATION 5.60 Radiolocation	70-72 RADIONAVIGATION 5.60 Fixed Maritime mobile 5.57 5.59	70-90 FIXED MARITIME MOBILE 5.57 Radiolocation	70-90 FIXED Radiolocation	Private Land Mobile (90)
72-84 FIXED MARITIME MOBILE 5.57 RADIONAVIGATION 5.60 5.56		72-84 FIXED MARITIME MOBILE 5.57 RADIONAVIGATION 5.60			
84-86 RADIONAVIGATION 5.60		84-86 RADIONAVIGATION 5.60 Fixed Maritime mobile 5.57 5.59			

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86-90 FIXED MARITIME MOBILE 5.57 RADIONAVIGATION 5.56	5.61	86-90 FIXED MARITIME MOBILE 5.57 RADIONAVIGATION 5.60	US2	US2	
90-110 RADIONAVIGATION 5.62 Fixed 5.64			90-110 RADIONAVIGATION 5.62 US18 US2 US104		Aviation (87) Private Land Mobile (90)
110-112 FIXED MARITIME MOBILE RADIONAVIGATION 5.64	110-130 FIXED MARITIME MOBILE MARITIME RADIONAVIGATION 5.60 Radiolocation	110-112 FIXED MARITIME MOBILE RADIONAVIGATION 5.60 5.64	110-130 FIXED MARITIME MOBILE Radiolocation		Private Land Mobile (90)
112-115 RADIONAVIGATION 5.60		112-117.6 RADIONAVIGATION 5.60 Fixed Maritime mobile			
115-117.6 RADIONAVIGATION 5.60 Fixed Maritime mobile 5.64 5.66		5.64 5.65			
117.6-126 FIXED MARITIME MOBILE RADIONAVIGATION 5.60 5.64		117.6-126 FIXED MARITIME MOBILE RADIONAVIGATION 5.60 5.64			
126-129 RADIONAVIGATION 5.60		126-129 RADIONAVIGATION 5.60 Fixed Maritime mobile 5.64 5.65			
129-130 FIXED MARITIME MOBILE RADIONAVIGATION 5.60 5.64	5.61 5.64	129-130 FIXED MARITIME MOBILE RADIONAVIGATION 5.60 5.64	5.64 US2		
130-135.7 FIXED MARITIME MOBILE 5.64 5.67	130-135.7 FIXED MARITIME MOBILE 5.64	130-135.7 FIXED MARITIME MOBILE RADIONAVIGATION 5.64	130-135.7 FIXED MARITIME MOBILE 5.64 US2		Maritime (80)
135.7-137.8 FIXED MARITIME MOBILE Amateur 5.67A 5.64 5.67 5.67B	135.7-137.8 FIXED MARITIME MOBILE Amateur 5.67A 5.64	135.7-137.8 FIXED MARITIME MOBILE RADIONAVIGATION Amateur 5.67A 5.64 5.67B	135.7-137.8 FIXED MARITIME MOBILE 5.64 US2	135.7-137.8 Amateur 5.67A US2	Amateur Radio (97)

435-472 MARITIME MOBILE 5.79 Aeronautical radionavigation 5.77 5.82	5.78 5.82		435-472 MARITIME MOBILE 5.79 5.79A Aeronautical radionavigation 5.82 US2 US231	435-472 MARITIME MOBILE 5.79 5.79A 5.82 US2 US231	
472-479 MARITIME MOBILE 5.79 Amateur 5.80A Aeronautical radionavigation 5.77 5.80 5.80B 5.82			472-479 US2	472-479 Amateur 5.80A 5.82 US2 NG8	Amateur Radio (97)
479-495 MARITIME MOBILE 5.79 5.79A Aeronautical radionavigation 5.77 5.82	479-495 MARITIME MOBILE 5.79 5.79A Aeronautical radionavigation 5.77 5.80 5.82		479-495 MARITIME MOBILE 5.79 5.79A Aeronautical radionavigation 5.82 US2 US231	479-495 MARITIME MOBILE 5.79 5.79A 5.82 US2 US231	Maritime (80)
495-505 MARITIME MOBILE			495-505 MARITIME MOBILE		Maritime (80) Aviation (87)
505-526.5 MARITIME MOBILE 5.79 5.79A 5.84 AERONAUTICAL RADIONAVIGATION	505-510 MARITIME MOBILE 5.79	505-526.5 MARITIME MOBILE 5.79 5.79A 5.84 AERONAUTICAL RADIONAVIGATION Aeronautical mobile Land mobile	505-510 MARITIME MOBILE 5.79		Maritime (80)
	510-525 MARITIME MOBILE 5.79A 5.84 AERONAUTICAL RADIONAVIGATION		510-525 MARITIME MOBILE (ships only) 5.79A 5.84 AERONAUTICAL RADIONAVIGATION (radiobeacons) US18 US14 US225		Maritime (80) Aviation (87)
526.5-1606.5 BROADCASTING	525-535 BROADCASTING 5.86 AERONAUTICAL RADIONAVIGATION	526.5-535 BROADCASTING Mobile 5.88	525-535 MOBILE US221 AERONAUTICAL RADIONAVIGATION (radiobeacons) US18 US239		Aviation (87) Private Land Mobile (90)
	535-1605 BROADCASTING	535-1606.5 BROADCASTING	535-1605	535-1605 BROADCASTING NG1 NG5	Radio Broadcast (AM)(73) Private Land Mobile (90)
5.87 5.87A	1605-1625		1605-1615 MOBILE US221 G127	1605-1705 BROADCASTING 5.89	
1606.5-1625 FIXED MARITIME MOBILE 5.90 LAND MOBILE 5.92	BROADCASTING 5.89 5.90	1606.5-1800 FIXED MOBILE RADIOLOCATION RADIONAVIGATION	1615-1705		Radio Broadcast (AM)(73) Alaska Fixed (80) Private Land Mobile (90)
1625-1635 RADIOLOCATION 5.93	1625-1705 FIXED MOBILE				
1635-1800 FIXED MARITIME MOBILE 5.90 LAND MOBILE 5.92 5.96	BROADCASTING 5.89 Radiolocation 5.90 1705-1800 FIXED MOBILE RADIOLOCATION AERONAUTICAL RADIONAVIGATION		US299	US299 NG1 NG5	
			1705-1800 FIXED MOBILE RADIOLOCATION US240		Alaska Fixed (80) Private Land Mobile (90)
		5.91			

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Table of Frequency Allocations		1800-3230 kHz (MF/HF)			Page 5
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
1800-1810 RADIOLOCATION 5.93	1800-1850 AMATEUR	1800-2000 AMATEUR FIXED MOBILE except aeronautical mobile RADIONAVIGATION Radiolocation	1800-2000	1800-2000 AMATEUR	Maritime (80) Amateur Radio (97)
1810-1850 AMATEUR 5.98 5.99 5.100					
1850-2000 FIXED MOBILE except aeronautical mobile 5.92 5.96 5.103	1850-2000 AMATEUR FIXED MOBILE except aeronautical mobile RADIOLOCATION RADIONAVIGATION 5.102	5.97		NG92	
2000-2025 FIXED MOBILE except aeronautical mobile (R) 5.92 5.103	2000-2065 FIXED MOBILE		2000-2065 FIXED MOBILE	2000-2065 MARITIME MOBILE	Private Land Mobile (90)
2025-2045 FIXED MOBILE except aeronautical mobile (R) Meteorological aids 5.104 5.92 5.103					
2045-2160 FIXED MARITIME MOBILE LAND MOBILE 5.92			US340	US340 NG7	
	2065-2107 MARITIME MOBILE 5.105 5.106		2065-2107 MARITIME MOBILE 5.105 US296 US340		Maritime (80)
2160-2170 RADIOLOCATION 5.93 5.107	2107-2170 FIXED MOBILE		2107-2170 FIXED MOBILE US340	2107-2170 FIXED MOBILE except aeronautical mobile US340 NG7	Maritime (80) Private Land Mobile (90)
2170-2173.5 MARITIME MOBILE			2170-2173.5 MARITIME MOBILE (telephony) US340	2170-2173.5 MARITIME MOBILE US340	Maritime (80)
2173.5-2190.5 MOBILE (distress and calling) 5.108 5.109 5.110 5.111			2173.5-2190.5 MOBILE (distress and calling) 5.108 5.109 5.110 5.111 US279 US340		Maritime (80) Aviation (87)
2190.5-2194 MARITIME MOBILE			2190.5-2194 MARITIME MOBILE (telephony) US340	2190.5-2194 MARITIME MOBILE US340	Maritime (80)

Table of Frequency Allocations		3.23-5.9 MHz (HF)			Page 7
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
3.23-3.4 FIXED MOBILE except aeronautical mobile BROADCASTING 5.113 5.116 5.118			3.23-3.4 FIXED MOBILE except aeronautical mobile Radiolocation US340		Maritime (80) Aviation (87) Private Land Mobile (90)
3.4-3.5 AERONAUTICAL MOBILE (R)			3.4-3.5 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)
3.5-3.8 AMATEUR FIXED MOBILE except aeronautical mobile 5.92	3.5-3.75 AMATEUR 5.119 3.75-4 AMATEUR FIXED MOBILE except aeronautical mobile (R)	3.5-3.9 AMATEUR FIXED MOBILE	3.5-4	3.5-4 AMATEUR	Amateur Radio (97)
3.8-3.9 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE					
3.9-3.95 AERONAUTICAL MOBILE (OR) 5.123		3.9-3.95 AERONAUTICAL MOBILE BROADCASTING			
3.95-4 FIXED BROADCASTING		3.95-4 FIXED BROADCASTING			
	5.122 5.125	5.126	US340	US340	
4-4.063 FIXED MARITIME MOBILE 5.127 5.126			4-4.063 FIXED MARITIME MOBILE US340		Maritime (80)
4.063-4.438 MARITIME MOBILE 5.79A 5.109 5.110 5.130 5.131 5.132 5.128			4.063-4.438 MARITIME MOBILE 5.79A 5.109 5.110 5.130 5.131 5.132 US82 US296 US340		Maritime (80) Aviation (87)
4.438-4.488 FIXED MOBILE except aeronautical mobile (R) Radiolocation 5.132A 5.132B	4.438-4.488 FIXED MOBILE except aeronautical mobile (R) RADIOLOCATION 5.132A	4.438-4.488 FIXED MOBILE except aeronautical mobile Radiolocation 5.132A	4.438-4.488 FIXED MOBILE except aeronautical mobile (R) RADIOLOCATION 5.132A US340		Maritime (80) Private Land Mobile (90)
4.488-4.65 FIXED MOBILE except aeronautical mobile (R)		4.488-4.65 FIXED MOBILE except aeronautical mobile	4.488-4.65 FIXED MOBILE except aeronautical mobile (R) US22 US340		Maritime (80) Aviation (87) Private Land Mobile (90)
4.65-4.7 AERONAUTICAL MOBILE (R)			4.65-4.7 AERONAUTICAL MOBILE (R) US282 US283 US340		Aviation (87)

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4.7-4.75 AERONAUTICAL MOBILE (OR)			4.7-4.75 AERONAUTICAL MOBILE (OR) US340		
4.75-4.85 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE BROADCASTING 5.113	4.75-4.85 FIXED MOBILE except aeronautical mobile (R) BROADCASTING 5.113	4.75-4.85 FIXED BROADCASTING 5.113 Land mobile	4.75-4.85 FIXED MOBILE except aeronautical mobile (R) US340		Maritime (80) Private Land Mobile (90)
4.85-4.995 FIXED LAND MOBILE BROADCASTING 5.113			4.85-4.995 FIXED MOBILE US340	4.85-4.995 FIXED US340	Aviation (87) Private Land Mobile (90)
4.995-5.003 STANDARD FREQUENCY AND TIME SIGNAL (5 MHz)			4.995-5.005 STANDARD FREQUENCY AND TIME SIGNAL (5 MHz)		
5.003-5.005 STANDARD FREQUENCY AND TIME SIGNAL Space research			US1 US340		
5.005-5.06 FIXED BROADCASTING 5.113			5.005-5.06 FIXED US22 US340		Aviation (87) Private Land Mobile (90)
5.06-5.25 FIXED Mobile except aeronautical mobile 5.133			5.06-5.25 FIXED US22 Mobile except aeronautical mobile US212 US340		Maritime (80) Aviation (87) Private Land Mobile (90)
5.25-5.275 FIXED MOBILE except aeronautical mobile Radiolocation 5.132A 5.133A	5.25-5.275 FIXED MOBILE except aeronautical mobile RADIOLOCATION 5.132A	5.25-5.275 FIXED MOBILE except aeronautical mobile Radiolocation 5.132A	5.25-5.275 FIXED MOBILE except aeronautical mobile RADIOLOCATION 5.132A US340		Maritime (80) Private Land Mobile (90)
5.275-5.45 FIXED MOBILE except aeronautical mobile			5.275-5.45 FIXED US22 Mobile except aeronautical mobile US23 US340		Maritime (80) Aviation (87) Private Land Mobile (90) Amateur Radio (97)
5.45-5.48 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	5.45-5.48 AERONAUTICAL MOBILE (R)	5.45-5.48 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	5.45-5.68 AERONAUTICAL MOBILE (R)		Aviation (87)
5.48-5.68 AERONAUTICAL MOBILE (R) 5.111 5.115			5.111 5.115 US283 US340		
5.68-5.73 AERONAUTICAL MOBILE (OR) 5.111 5.115			5.68-5.73 AERONAUTICAL MOBILE (OR) 5.111 5.115 US340		
5.73-5.9 FIXED LAND MOBILE	5.73-5.9 FIXED MOBILE except aeronautical mobile (R)	5.73-5.9 FIXED Mobile except aeronautical mobile (R)	5.73-5.9 FIXED MOBILE except aeronautical mobile (R) US340		Maritime (80) Aviation (87) Private Land Mobile (90)

Table of Frequency Allocations		11.175-15.1 MHz (HF)			Page 11
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
11.175-11.275 AERONAUTICAL MOBILE (OR)			11.175-11.275 AERONAUTICAL MOBILE (OR) US340		
11.275-11.4 AERONAUTICAL MOBILE (R)			11.275-11.4 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)
11.4-11.6 FIXED			11.4-11.6 FIXED US340		Private Land Mobile (90)
11.6-11.65 BROADCASTING 5.134 5.146			11.6-12.1 BROADCASTING 5.134		International Broadcast Stations (73F)
11.65-12.05 BROADCASTING 5.147					
12.05-12.1 BROADCASTING 5.134 5.146			US136 US340		
12.1-12.23 FIXED			12.1-12.23 FIXED US340		Private Land Mobile (90)
12.23-13.2 MARITIME MOBILE 5.109 5.110 5.132 5.145			12.23-13.2 MARITIME MOBILE 5.109 5.110 5.132 5.145 US82 US296 US340		Maritime (80)
13.2-13.26 AERONAUTICAL MOBILE (OR)			13.2-13.26 AERONAUTICAL MOBILE (OR) US340		
13.26-13.36 AERONAUTICAL MOBILE (R)			13.26-13.36 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)
13.36-13.41 FIXED RADIO ASTRONOMY 5.149			13.36-13.41 RADIO ASTRONOMY US342 G115	13.36-13.41 RADIO ASTRONOMY US342	
13.41-13.45 FIXED Mobile except aeronautical mobile (R)			13.41-13.45 FIXED Mobile except aeronautical mobile (R) US340	13.41-13.45 FIXED US340	Private Land Mobile (90)

13.45-13.55 FIXED Mobile except aeronautical mobile (R) Radiolocation 5.132A 5.149A	13.45-13.55 FIXED Mobile except aeronautical mobile (R) Radiolocation 5.132A	13.45-13.55 FIXED Mobile except aeronautical mobile (R) Radiolocation 5.132A US340	13.45-13.55 FIXED Radiolocation 5.132A US340	
13.55-13.57 FIXED Mobile except aeronautical mobile (R) 5.150		13.55-13.57 FIXED Mobile except aeronautical mobile (R) 5.150 US340	13.55-13.57 FIXED 5.150 US340	ISM Equipment (18) Private Land Mobile (90)
13.57-13.6 BROADCASTING 5.134 5.151		13.57-13.87 BROADCASTING 5.134		International Broadcast Stations (73F)
13.6-13.8 BROADCASTING				
13.8-13.87 BROADCASTING 5.134 5.151		US136 US340		
13.87-14 FIXED Mobile except aeronautical mobile (R)		13.87-14 FIXED Mobile except aeronautical mobile (R) US340	13.87-14 FIXED US340	Private Land Mobile (90)
14-14.25 AMATEUR AMATEUR-SATELLITE		14-14.35	14-14.25 AMATEUR AMATEUR-SATELLITE US340	Amateur Radio (97)
14.25-14.35 AMATEUR 5.152		US340	14.25-14.35 AMATEUR US340	
14.35-14.99 FIXED Mobile except aeronautical mobile (R)		14.35-14.99 FIXED Mobile except aeronautical mobile (R) US340	14.35-14.99 FIXED US340	Private Land Mobile (90)
14.99-15.005 STANDARD FREQUENCY AND TIME SIGNAL (15 MHz) 5.111		14.99-15.01 STANDARD FREQUENCY AND TIME SIGNAL (15 MHz)		
15.005-15.01 STANDARD FREQUENCY AND TIME SIGNAL Space research		5.111 US1 US340		
15.01-15.1 AERONAUTICAL MOBILE (OR)		15.01-15.1 AERONAUTICAL MOBILE (OR) US340		

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Table of Frequency Allocations			15.1-22.855 MHz (HF)		Page 13
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
15.1-15.6 BROADCASTING			15.1-15.8 BROADCASTING 5.134		International Broadcast Stations (73F)
15.6-15.8 BROADCASTING 5.134 5.146			US136 US340		
15.8-16.1 FIXED 5.153			15.8-16.1 FIXED US340		Private Land Mobile (90)
16.1-16.2 FIXED Radiolocation 5.145A 5.145B	16.1-16.2 FIXED RADIOLOCATION 5.145A	16.1-16.2 FIXED Radiolocation 5.145A	16.1-16.2 FIXED RADIOLOCATION 5.145A US340		
16.2-16.36 FIXED			16.2-16.36 FIXED US340		
16.36-17.41 MARITIME MOBILE 5.109 5.110 5.132 5.145			16.36-17.41 MARITIME MOBILE 5.109 5.110 5.132 5.145 US82 US296 US340		Maritime (80)
17.41-17.48 FIXED			17.41-17.48 FIXED US340		Private Land Mobile (90)
17.48-17.55 BROADCASTING 5.134 5.146			17.48-17.9 BROADCASTING 5.134		International Broadcast Stations (73F)
17.55-17.9 BROADCASTING			US136 US340		
17.9-17.97 AERONAUTICAL MOBILE (R)			17.9-17.97 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)
17.97-18.03 AERONAUTICAL MOBILE (OR)			17.97-18.03 AERONAUTICAL MOBILE (OR) US340		
18.030-18.052 FIXED			18.03-18.068 FIXED		Maritime (80) Private Land Mobile (90)
18.052-18.068 FIXED Space research			US340		
18.068-18.168 AMATEUR AMATEUR-SATELLITE 5.154			18.068-18.168 US340	18.068-18.168 AMATEUR AMATEUR-SATELLITE US340	Amateur Radio (97)
18.168-18.78 FIXED Mobile except aeronautical mobile			18.168-18.78 FIXED Mobile US340		Maritime (80) Private Land Mobile (90)

Table of Frequency Allocations		22.855-27.41 MHz (HF)			Page 15
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Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
22.855-23 FIXED 5.156			22.855-23 FIXED US340		Private Land Mobile (90)
23-23.2 FIXED Mobile except aeronautical mobile (R) 5.156			23-23.2 FIXED Mobile except aeronautical mobile (R) US340	23-23.2 FIXED US340	
23.2-23.35 FIXED 5.156A AERONAUTICAL MOBILE (OR)			23.2-23.35 AERONAUTICAL MOBILE (OR) US340		
23.35-24 FIXED MOBILE except aeronautical mobile 5.157			23.35-24.45 FIXED MOBILE except aeronautical mobile US340	23.35-24.45 FIXED US340	Private Land Mobile (90)
24-24.45 FIXED LAND MOBILE					
24.45-24.6 FIXED LAND MOBILE Radiolocation 5.132A 5.158	24.45-24.65 FIXED LAND MOBILE RADIOLOCATION 5.132A	24.45-24.6 FIXED LAND MOBILE Radiolocation 5.132A	24.45-24.65 FIXED MOBILE except aeronautical mobile RADIOLOCATION 5.132A US340	24.45-24.65 FIXED RADIOLOCATION 5.132A US340	
24.6-24.89 FIXED LAND MOBILE		24.6-24.89 FIXED LAND MOBILE			
	24.65-24.89 FIXED LAND MOBILE		24.65-24.89 FIXED MOBILE except aeronautical mobile US340	24.65-24.89 FIXED US340	
24.89-24.99 AMATEUR AMATEUR-SATELLITE			24.89-24.99 US340	24.89-24.99 AMATEUR AMATEUR-SATELLITE US340	Amateur Radio (97)
24.99-25.005 STANDARD FREQUENCY AND TIME SIGNAL (25 MHz)			24.99-25.01 STANDARD FREQUENCY AND TIME SIGNAL (25 MHz)		
25.005-25.01 STANDARD FREQUENCY AND TIME SIGNAL Space research			 US1 US340		
25.01-25.07 FIXED MOBILE except aeronautical mobile			25.01-25.07 US340	25.01-25.07 LAND MOBILE US340 NG112	Private Land Mobile (90)
25.07-25.21 MARITIME MOBILE			25.07-25.21 MARITIME MOBILE US82 US281 US296 US340	25.07-25.21 MARITIME MOBILE US82 US281 US296 US340 NG112	Maritime (80) Private Land Mobile (90)

25.21-25.55 FIXED MOBILE except aeronautical mobile			25.21-25.33 US340	25.21-25.33 LAND MOBILE US340	Private Land Mobile (90)
			25.33-25.55 FIXED MOBILE except aeronautical mobile US340	25.33-25.55 US340	
25.55-25.67 RADIO ASTRONOMY 5.149			25.55-25.67 RADIO ASTRONOMY US74 US342		
25.67-26.1 BROADCASTING			25.67-26.1 BROADCASTING US25 US340		International Broadcast Stations (73F) Remote Pickup (74D)
26.1-26.175 MARITIME MOBILE 5.132			26.1-26.175 MARITIME MOBILE 5.132 US25 US340		Remote Pickup (74D) Low Power Auxiliary (74H) Maritime (80)
26.175-26.2 FIXED MOBILE except aeronautical mobile			26.175-26.2 US340	26.175-26.2 LAND MOBILE US340	Remote Pickup (74D) Low Power Auxiliary (74H)
26.2-26.35 FIXED MOBILE except aeronautical mobile Radiolocation 5.132A 5.133A	26.2-26.42 FIXED MOBILE except aeronautical mobile RADIOLOCATION 5.132A	26.2-26.35 FIXED MOBILE except aeronautical mobile Radiolocation 5.132A	26.2-26.42 RADIOLOCATION US132A US340	26.2-26.42 LAND MOBILE RADIOLOCATION US132A US340	Remote Pickup (74D) Low Power Auxiliary (74H) Private Land Mobile (90)
26.35-27.5 FIXED MOBILE except aeronautical mobile	26.42-27.5 FIXED MOBILE except aeronautical mobile	26.35-27.5 FIXED MOBILE except aeronautical mobile	26.42-26.48 US340	26.42-26.48 LAND MOBILE US340	Remote Pickup (74D) Low Power Auxiliary (74H)
			26.48-26.95 FIXED MOBILE except aeronautical mobile US340	26.48-26.95 US340	
			26.95-27.41	26.95-26.96 FIXED 5.150 US340	ISM Equipment (18)
				26.96-27.23 MOBILE except aeronautical mobile 5.150 US340	ISM Equipment (18) Personal Radio (95)
				27.23-27.41 FIXED MOBILE except aeronautical mobile	ISM Equipment (18) Private Land Mobile (90) Personal Radio (95)
5.150	5.150	5.150	5.150 US340	5.150 US340	

Table of Frequency Allocations		27.41-41.015 MHz (HF/VHF)			Page 17
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)			27.41-27.54	27.41-27.54 FIXED LAND MOBILE	Private Land Mobile (90)
27.5-28 METEOROLOGICAL AIDS FIXED MOBILE			US340	US340	
			27.54-28 FIXED MOBILE	27.54-28	
			US298 US340	US298 US340	
28-29.7 AMATEUR AMATEUR-SATELLITE			28-29.7	28-29.7 AMATEUR AMATEUR-SATELLITE	Amateur Radio (97)
			US340	US340	
29.7-30.005 FIXED MOBILE			29.7-29.89	29.7-29.8 LAND MOBILE	Private Land Mobile (90)
				US340	
				29.8-29.89 FIXED	
			US340	US340	
			29.89-29.91 FIXED MOBILE	29.89-29.91	
			US340	US340	
			29.91-30	29.91-30 FIXED	
			US340	US340	
			30-30.56 FIXED MOBILE	30-30.56	
30.005-30.01 SPACE OPERATION (satellite identification) FIXED MOBILE SPACE RESEARCH					
30.01-37.5 FIXED MOBILE			30.56-32	30.56-32 FIXED LAND MOBILE	Private Land Mobile (90)
				NG124	
			32-33 FIXED MOBILE	32-33	
			33-34	33-34 FIXED LAND MOBILE	Private Land Mobile (90)
				NG124	

			34-35 FIXED MOBILE	34-35	
			35-36	35-36 FIXED LAND MOBILE	Public Mobile (22) Private Land Mobile (90)
			36-37 FIXED MOBILE US220	36-37 US220	
			37-37.5	37-37.5 LAND MOBILE NG124	Private Land Mobile (90)
37.5-38.25 FIXED MOBILE Radio astronomy 5.149			37.5-38 Radio astronomy US342	37.5-38 LAND MOBILE Radio astronomy US342 NG59 NG124	
			38-38.25 FIXED MOBILE RADIO ASTRONOMY US81 US342	38-38.25 RADIO ASTRONOMY US81 US342	
38.25-39 FIXED MOBILE	38.25-39.986 FIXED MOBILE	38.25-39.5 FIXED MOBILE	38.25-39 FIXED MOBILE	38.25-39	
39-39.5 FIXED MOBILE Radiolocation 5.132A 5.159			39-40	39-40 LAND MOBILE NG124	Private Land Mobile (90)
39.5-39.986 FIXED MOBILE		39.5-39.986 FIXED MOBILE RADIOLOCATION 5.132A			
39.986-40.02 FIXED MOBILE Space research		39.986-40 FIXED MOBILE RADIOLOCATION 5.132A Space research			
		40-40.02 FIXED MOBILE Space research	40-41.015 FIXED MOBILE 5.150 US210 US220	40-41.015 5.150 US210 US220	ISM Equipment (18) Private Land Mobile (90)
40.02-40.98 FIXED MOBILE 5.150					

Table of Frequency Allocations	41.015-117.975 MHz (VHF)				Page 19
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
40.98-41.015 FIXED MOBILE Space research 5.160 5.161			(See previous page)		
41.015-42 FIXED MOBILE 5.160 5.161 5.161A			41.015-41.665 FIXED MOBILE RADIOLOCATION US132A US220	41.015-41.665 RADIOLOCATION US132A US220	Private Land Mobile (90)
			41.665-42 FIXED MOBILE US220	41.665-42 US220	
42-42.5 FIXED MOBILE Radiolocation 5.132A 5.160 5.161B	42-42.5 FIXED MOBILE 5.161		42-43.35	42-43.35 FIXED LAND MOBILE NG124 NG141	Public Mobile (22) Private Land Mobile (90)
42.5-44 FIXED MOBILE 5.160 5.161 5.161A			43.35-44 RADIOLOCATION US132A	43.35-43.69 FIXED LAND MOBILE RADIOLOCATION US132A NG124	
				43.69-44 LAND MOBILE RADIOLOCATION US132A NG124	Private Land Mobile (90)
44-47 FIXED MOBILE 5.162 5.162A			44-46.6	44-46.6 LAND MOBILE NG124 NG141	
			46.6-47 FIXED MOBILE	46.6-47	
47-68 BROADCASTING	47-50 FIXED MOBILE	47-50 FIXED MOBILE BROADCASTING 5.162A	47-49.6	47-49.6 LAND MOBILE NG124	Private Land Mobile (90)
			49.6-50 FIXED MOBILE	49.6-50	
	50-54 AMATEUR 5.162A 5.166 5.167 5.167A 5.168 5.170		50-73	50-54 AMATEUR	Amateur Radio (97)

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*		54-68 BROADCASTING Fixed Mobile	54-68 FIXED MOBILE BROADCASTING	54-72 BROADCASTING	Broadcast Radio (TV)(73) LPTV, TV Translator/ Booster (74G) Low Power Auxiliary (74H)
*	5.162A 5.163 5.164 5.165 5.169 5.171	5.172	5.162A	NG5 NG14 NG115 NG149	
*	68-74.8 FIXED MOBILE except aeronautical mobile	68-72 BROADCASTING Fixed Mobile	68-74.8 FIXED MOBILE		
		5.173		72-73 FIXED MOBILE	Public Mobile (22) Maritime (80) Aviation (87) Private Land Mobile (90) Personal Radio (95)
		72-73 FIXED MOBILE		NG3 NG16 NG56	
		73-74.6 RADIO ASTRONOMY 5.178		73-74.6 RADIO ASTRONOMY US74 US246	
		74.6-74.8 FIXED MOBILE		74.6-74.8 FIXED MOBILE US273	Private Land Mobile (90)
	5.149 5.175 5.177 5.179		5.149 5.176 5.179		
	74.8-75.2 AERONAUTICAL RADIONAVIGATION 5.180 5.181			74.8-75.2 AERONAUTICAL RADIONAVIGATION 5.180	Aviation (87)
	75.2-87.5 FIXED MOBILE except aeronautical mobile	75.2-75.4 FIXED MOBILE 5.179		75.2-75.4 FIXED MOBILE US273	Private Land Mobile (90)
		75.4-76 FIXED MOBILE	75.4-87 FIXED MOBILE	75.4-88	75.4-76 FIXED MOBILE NG3 NG16 NG56	Public Mobile (22) Maritime (80) Aviation (87) Private Land Mobile (90) Personal Radio (95)
		76-88 BROADCASTING Fixed Mobile	5.182 5.183 5.188 87-100 FIXED MOBILE BROADCASTING		76-88 BROADCASTING NG5 NG14 NG115 NG149	Broadcast Radio (TV)(73) LPTV, TV Translator/ Booster (74G) Low Power Auxiliary (74H)
	5.175 5.179 5.187 87.5-100 BROADCASTING 5.190	5.185 88-100 BROADCASTING		88-108	88-108 BROADCASTING NG2	Broadcast Radio (FM)(73) FM Translator/Booster (74L)
	100-108 BROADCASTING 5.192 5.194			US93	US93 NG5	
	108-117.975 AERONAUTICAL RADIONAVIGATION 5.197 5.197A			108-117.975 AERONAUTICAL RADIONAVIGATION 5.197A US93	Aviation (87)

Table of Frequency Allocations	150.8-174 MHz (VHF)			Page 23
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)	(See previous page)		150.8-152.855 US73	150.8-152.855 FIXED LAND MOBILE NG4 NG51 NG112 US73 NG124	Public Mobile (22) Private Land Mobile (90) Personal Radio (95)
153-154 FIXED MOBILE except aeronautical mobile (R) Meteorological aids			152.855-156.2475	152.855-154 LAND MOBILE NG4 NG124	Remote Pickup (74D) Private Land Mobile (90)
154-156.4875 FIXED MOBILE except aeronautical mobile (R) 5.225A 5.226	154-156.4875 FIXED MOBILE 5.226	154-156.4875 FIXED MOBILE 5.225A 5.226		154-156.2475 FIXED LAND MOBILE NG112 5.226 NG22 NG124 NG148	Maritime (80) Private Land Mobile (90) Personal Radio (95)
156.4875-156.5625 MARITIME MOBILE (distress and calling via DSC) 5.111 5.226 5.227			156.2475-156.5125 5.226 US52 US227 US266	156.2475-156.5125 MARITIME MOBILE NG22 5.226 US52 US227 US266 NG124	Maritime (80) Aviation (87)
			156.5125-156.5375 MARITIME MOBILE (distress, urgency, safety and calling via DSC) 5.111 5.226 US266		
156.5625-156.7625 FIXED MOBILE except aeronautical mobile (R) 5.226	156.5625-156.7625 FIXED MOBILE 5.226		156.5375-156.7625 5.226 US52 US227 US266	156.5375-156.7625 MARITIME MOBILE 5.226 US52 US227 US266	
156.7625-156.7875 MARITIME MOBILE Mobile-satellite (Earth-to-space) 5.111 5.226 5.228	156.7625-156.7875 MARITIME MOBILE MOBILE-SATELLITE (Earth-to-space) 5.111 5.226 5.228	156.7625-156.7875 MARITIME MOBILE Mobile-satellite (Earth-to-space) 5.111 5.226 5.228	156.7625-156.7875 MOBILE-SATELLITE (Earth-to-space) (AIS 3) 5.226 US52 US266		Satellite Communications (25) Maritime (80)
156.7875-156.8125 MARITIME MOBILE (distress and calling) 5.111 5.226			156.7875-156.8125 MARITIME MOBILE (distress, urgency, safety and calling) 5.111 5.226 US266		Maritime (80) Aviation (87)
156.8125-156.8375 MARITIME MOBILE Mobile-satellite (Earth-to-space) 5.111 5.226 5.228	156.8125-156.8375 MARITIME MOBILE MOBILE-SATELLITE (Earth-to-space) 5.111 5.226 5.228	156.8125-156.8375 MARITIME MOBILE Mobile-satellite (Earth-to-space) 5.111 5.226 5.228	156.8125-156.8375 MOBILE-SATELLITE (Earth-to-space) (AIS 4) 5.226 US52 US266		Satellite Communications (25) Maritime (80)
156.8375-161.9625 FIXED MOBILE except aeronautical mobile	156.8375-161.9625 FIXED MOBILE		156.8375-157.0375 5.226 US52 US266	156.8375-157.0375 MARITIME MOBILE 5.226 US52 US266	Maritime (80) Aviation (87)
			157.0375-157.1875 MARITIME MOBILE US214 5.226 US266 G109	157.0375-157.1875 5.226 US214 US266	Maritime (80)

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			157.1875-161.575	157.1875-157.45 MOBILE except aeronautical mobile US266 5.226 NG111	Maritime (80) Aviation (87) Private Land Mobile (90)
				157.45-161.575 FIXED LAND MOBILE NG28 NG111 NG112 5.226 NG6 NG70 NG124 NG148 NG155	Public Mobile (22) Remote Pickup (74D) Maritime (80) Private Land Mobile (90)
			161.575-161.625 5.226 US52	161.575-161.625 MARITIME MOBILE 5.226 US52 NG6 NG17	Public Mobile (22) Maritime (80)
			161.625-161.9625	161.625-161.775 LAND MOBILE NG6 5.226	Public Mobile (22) Remote Pickup (74D) Low Power Auxiliary (74H)
				161.775-161.9625 MOBILE except aeronautical mobile US266 NG6	Maritime (80) Private Land Mobile (90)
5.226	5.226		US266	5.226	
161.9625-161.9875 FIXED MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.228F 5.226 5.228A 5.228B	161.9625-161.9875 AERONAUTICAL MOBILE (OR) MARITIME MOBILE MOBILE-SATELLITE (Earth-to-space) 5.228C 5.228D	161.9625-161.9875 MARITIME MOBILE Aeronautical mobile (OR) 5.228E Mobile-satellite (Earth-to-space) 5.228F 5.226	161.9625-161.9875 AERONAUTICAL MOBILE (OR) (AIS 1) MARITIME MOBILE (AIS 1) MOBILE-SATELLITE (Earth-to-space) (AIS 1) 5.228C US52		Satellite Communications (25) Maritime (80)
161.9875-162.0125 FIXED MOBILE except aeronautical mobile 5.226 5.229	161.9875-162.0125 FIXED MOBILE 5.226		161.9875-162.0125	161.9875-162.0125 MOBILE except aeronautical mobile 5.226	Maritime (80)
162.0125-162.0375 FIXED MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.228F 5.226 5.228A 5.228B 5.229	162.0125-162.0375 AERONAUTICAL MOBILE (OR) MARITIME MOBILE MOBILE-SATELLITE (Earth-to-space) 5.228C 5.228D	162.0125-162.0375 MARITIME MOBILE Aeronautical mobile (OR) 5.228E Mobile-satellite (Earth-to-space) 5.228F 5.226	162.0125-162.0375 AERONAUTICAL MOBILE (OR) (AIS 2) MARITIME MOBILE (AIS 2) MOBILE-SATELLITE (Earth-to-space) (AIS 2) 5.228C US52		Satellite Communications (25) Maritime (80)
162.0375-174 FIXED MOBILE except aeronautical mobile	162.0375-174 FIXED MOBILE		162.0375-173.2 FIXED MOBILE US8 US11 US13 US73 US300 US312 G5	162.0375-173.2 US8 US11 US13 US73 US300 US312	Remote Pickup (74D) Private Land Mobile (90)
			173.2-173.4	173.2-173.4 FIXED Land mobile	Private Land Mobile (90)
			173.4-174 FIXED MOBILE	173.4-174	
5.226 5.229	5.226 5.230 5.231 5.232		G5		Page 24

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Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
(See previous page)	3500-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 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	3500-3550 Radiolocation	Private Land Mobile (90)
			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 Radiolocation 5.433	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)
			3650-3700	3650-3700 FIXED FIXED-SATELLITE (space-to-Earth) NG169 NG185 MOBILE except aeronautical mobile	
		5.435	US109 US349	US109 US349	
	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile		3700-4200	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) NG180	Satellite Communications (25) Fixed Microwave (101)
4200-4400 AERONAUTICAL RADIONAVIGATION 5.438 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 5.442 Radio astronomy			US113 US245 US342	4800-4940 US113 US342	
			4940-4990	4940-4990 FIXED MOBILE except aeronautical mobile	Public Safety Land Mobile (90Y)
5.149 5.339 5.443			5.339 US342 US385 G122	5.339 US342 US385	
4990-5000 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY Space research (passive) 5.149			4990-5000 RADIO ASTRONOMY US74 Space research (passive) US246		

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5000-5010 AERONAUTICAL MOBILE-SATELLITE (R) 5.443AA AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (Earth-to-space)	5000-5010 AERONAUTICAL MOBILE (R) US115 AERONAUTICAL MOBILE-SATELLITE (R) 5.443AA AERONAUTICAL RADIONAVIGATION US260 RADIONAVIGATION-SATELLITE (Earth-to-space) US211		Aviation (87)
5010-5030 AERONAUTICAL MOBILE-SATELLITE (R) 5.443AA AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.443B	5010-5030 AERONAUTICAL MOBILE-SATELLITE (R) 5.443AA AERONAUTICAL RADIONAVIGATION US260 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.443B US115 US211		
5030-5091 AERONAUTICAL MOBILE (R) 5.443C AERONAUTICAL MOBILE-SATELLITE (R) 5.443D AERONAUTICAL RADIONAVIGATION 5.444	5030-5091 AERONAUTICAL MOBILE (R) 5.443C AERONAUTICAL MOBILE-SATELLITE (R) 5.443D AERONAUTICAL RADIONAVIGATION US260 US211 US444		
5091-5150 AERONAUTICAL MOBILE 5.444B AERONAUTICAL MOBILE-SATELLITE (R) 5.443AA AERONAUTICAL RADIONAVIGATION 5.444 5.444A	5091-5150 AERONAUTICAL MOBILE US111 US444B AERONAUTICAL MOBILE-SATELLITE (R) 5.443AA AERONAUTICAL RADIONAVIGATION US260 US211 US344 US444 US444A		Satellite Communications (25) Aviation (87)
5150-5250 FIXED-SATELLITE (Earth-to-space) 5.447A MOBILE except aeronautical mobile 5.446A 5.446B AERONAUTICAL RADIONAVIGATION 5.446 5.446C 5.447 5.447B 5.447C	5150-5250 AERONAUTICAL RADIONAVIGATION US260 US211 US307 US344	5150-5250 FIXED-SATELLITE (Earth-to-space) 5.447A US344 AERONAUTICAL RADIONAVIGATION US260 5.447C US211 US307	RF Devices (15) Satellite Communications (25) Aviation (87)
5250-5255 EARTH EXPLORATION-SATELLITE (active) MOBILE except aeronautical mobile 5.446A 5.447F RADIOLOCATION SPACE RESEARCH 5.447D 5.447E 5.448 5.448A	5250-5255 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active) 5.447D 5.448A	5250-5255 Earth exploration-satellite (active) Radiolocation Space research	RF Devices (15) Private Land Mobile (90)
5255-5350 EARTH EXPLORATION-SATELLITE (active) MOBILE except aeronautical mobile 5.446A 5.447F RADIOLOCATION SPACE RESEARCH (active) 5.447E 5.448 5.448A	5255-5350 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active) 5.448A	5255-5350 Earth exploration-satellite (active) Radiolocation Space research (active) 5.448A	
5350-5460 EARTH EXPLORATION-SATELLITE (active) 5.448B AERONAUTICAL RADIONAVIGATION 5.449 RADIOLOCATION 5.448D SPACE RESEARCH (active) 5.448C	5350-5460 EARTH EXPLORATION-SATELLITE (active) 5.448B SPACE RESEARCH (active) AERONAUTICAL RADIONAVIGATION 5.449 RADIOLOCATION G56 US390 G130	5350-5460 AERONAUTICAL RADIONAVIGATION 5.449 Earth exploration-satellite (active) 5.448B Space research (active) Radiolocation US390	Aviation (87) Private Land Mobile (90)

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Table of Frequency Allocations			7145-8650 MHz (SHF)		Page 45
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
7145-7235 FIXED MOBILE SPACE RESEARCH (Earth-to-space) 5.460 5.458 5.459			7145-7190 FIXED SPACE RESEARCH (deep space) (Earth-to-space) US262 5.458 G116	7145-7235 5.458 US262	RF Devices (15)
			7190-7235 FIXED SPACE RESEARCH (Earth-to-space) G133 5.458 G134		
7235-7250 FIXED MOBILE 5.458			7235-7250 FIXED 5.458	7235-7250 5.458	
7250-7300 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE 5.461			7250-7300 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Fixed G117	7250-8025	
7300-7450 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.461			7300-7450 FIXED FIXED-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth) G117		
7450-7550 FIXED FIXED-SATELLITE (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.461A			7450-7550 FIXED FIXED-SATELLITE (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth) G104 G117		
7550-7750 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 			7550-7750 FIXED FIXED-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth) G117		
7750-7900 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) 5.461B MOBILE except aeronautical mobile			7750-7900 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) 5.461B		

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Table of Frequency Allocations	15.4-21.2 GHz (SHF)				Page 51
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
15.4-15.43 RADIOLOCATION 5.511E 5.511F AERONAUTICAL RADIONAVIGATION 5.511D			15.4-15.43 RADIOLOCATION 5.511E 5.511F US511E AERONAUTICAL RADIONAVIGATION US260 US211	15.4-15.43 AERONAUTICAL RADIONAVIGATION US260 US211 US511E	Aviation (87)
15.43-15.63 FIXED-SATELLITE (Earth-to-space) 5.511A RADIOLOCATION 5.511E 5.511F AERONAUTICAL RADIONAVIGATION 5.511C			15.43-15.63 RADIOLOCATION 5.511E 5.511F US511E AERONAUTICAL RADIONAVIGATION US260 5.511C US211 US359	15.43-15.63 FIXED-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION US260 5.511C US211 US359 US511E	Satellite Communications (25) Aviation (87)
15.63-15.7 RADIOLOCATION 5.511E 5.511F AERONAUTICAL RADIONAVIGATION 5.511D			15.63-15.7 RADIOLOCATION 5.511E 5.511F US511E AERONAUTICAL RADIONAVIGATION US260 US211	15.63-15.7 AERONAUTICAL RADIONAVIGATION US260 US211 US511E	Aviation (87)
15.7-16.6 RADIOLOCATION 5.512 5.513			15.7-16.6 RADIOLOCATION G59	15.7-17.2 Radiolocation	Private Land Mobile (90)
16.6-17.1 RADIOLOCATION Space research (deep space) (Earth-to-space) 5.512 5.513			16.6-17.1 RADIOLOCATION G59 Space research (deep space) (Earth-to-space)		
17.1-17.2 RADIOLOCATION 5.512 5.513			17.1-17.2 RADIOLOCATION G59		
17.2-17.3 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.512 5.513 5.513A			17.2-17.3 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active)	17.2-17.3 Earth exploration-satellite (active) Radiolocation Space research (active)	
17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 (space-to-Earth) 5.516A 5.516B Radiolocation 5.514	17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 BROADCASTING-SATELLITE Radiolocation 5.514 5.515	17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 Radiolocation 5.514	17.3-17.7 Radiolocation US259 G59 US402 G117	17.3-17.7 FIXED-SATELLITE (Earth-to-space) US271 BROADCASTING-SATELLITE US402 NG163 US259	Satellite Communications (25)
17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8 FIXED FIXED-SATELLITE (space-to-Earth) 5.517 (Earth-to-space) 5.516 BROADCASTING-SATELLITE Mobile 5.515	17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8 US334 G117	17.7-17.8 FIXED FIXED-SATELLITE (Earth-to-space) US271 US334	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)

Table of Frequency Allocations	21.2-27 GHz (SHF)			Page 53
International Table			United States Table	FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table / Non-Federal Table	
21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive)			21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US532	Fixed Microwave (101)
21.4-22 FIXED MOBILE BROADCASTING-SATELLITE 5.208B 5.530A 5.530B 5.530C 5.530D	21.4-22 FIXED MOBILE 5.530A 5.530C	21.4-22 FIXED MOBILE BROADCASTING-SATELLITE 5.208B 5.530A 5.530B 5.530C 5.530D 5.531	21.4-22 FIXED MOBILE	
22-22.21 FIXED MOBILE except aeronautical mobile 5.149			22-22.21 FIXED MOBILE except aeronautical mobile US342	
22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) 5.149 5.532			22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) US342 US532	
22.5-22.55 FIXED MOBILE			22.5-22.55 FIXED MOBILE US211	
22.55-23.15 FIXED INTER-SATELLITE 5.338A MOBILE SPACE RESEARCH (Earth-to-space) 5.532A 5.149			22.55-23.15 FIXED INTER-SATELLITE US145 US278 MOBILE SPACE RESEARCH (Earth-to-space) 5.532A US342	Satellite Communications (25) Fixed Microwave (101)
23.15-23.55 FIXED INTER-SATELLITE 5.338A MOBILE			23.15-23.55 FIXED INTER-SATELLITE US145 US278 MOBILE	
23.55-23.6 FIXED MOBILE			23.55-23.6 FIXED MOBILE	Fixed Microwave (101)
23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340			23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246	

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24-24.05 AMATEUR AMATEUR-SATELLITE 5.150			24-24.05 5.150 US211	24-24.05 AMATEUR AMATEUR-SATELLITE 5.150 US211	ISM Equipment (18) Amateur Radio (97)
24.05-24.25 RADIOLOCATION Amateur Earth exploration-satellite (active) 5.150			24.05-24.25 RADIOLOCATION G59 Earth exploration-satellite (active) 5.150	24.05-24.25 Amateur Earth exploration-satellite (active) Radiolocation 5.150	RF Devices (15) ISM Equipment (18) Private Land Mobile (90) Amateur Radio (97)
24.25-24.45 FIXED	24.25-24.45 RADIONAVIGATION	24.25-24.45 FIXED MOBILE RADIONAVIGATION	24.25-24.45	24.25-24.45 FIXED	RF Devices (15) Fixed Microwave (101)
24.45-24.65 FIXED INTER-SATELLITE	24.45-24.65 INTER-SATELLITE RADIONAVIGATION 5.533	24.45-24.65 FIXED INTER-SATELLITE MOBILE RADIONAVIGATION 5.533	24.45-24.65 INTER-SATELLITE RADIONAVIGATION 5.533		RF Devices (15) Satellite Communications (25)
24.65-24.75 FIXED FIXED-SATELLITE (Earth-to-space) 5.532B INTER-SATELLITE	24.65-24.75 INTER-SATELLITE RADIOLOCATION-SATELLITE (Earth-to-space)	24.65-24.75 FIXED FIXED-SATELLITE (Earth-to-space) 5.532B INTER-SATELLITE MOBILE 5.533	24.65-24.75 INTER-SATELLITE RADIOLOCATION-SATELLITE (Earth-to-space)		
24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.532B	24.75-25.25 FIXED-SATELLITE (Earth-to-space) 5.535	24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.535 MOBILE	24.75-25.25	24.75-25.05 FIXED-SATELLITE (Earth-to-space) NG535	
				25.05-25.25 FIXED FIXED-SATELLITE (Earth-to-space) NG535	RF Devices (15) Satellite Communications (25) Fixed Microwave (101)
25.25-25.5 FIXED INTER-SATELLITE 5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)			25.25-25.5 FIXED INTER-SATELLITE 5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)	25.25-25.5 Inter-satellite 5.536 Standard frequency and time signal-satellite (Earth-to-space)	RF Devices (15)
25.5-27 EARTH EXPLORATION-SATELLITE (space-to-Earth) 5.536B FIXED INTER-SATELLITE 5.536 MOBILE SPACE RESEARCH (space-to-Earth) 5.536C Standard frequency and time signal-satellite (Earth-to-space) 5.536A			25.5-27 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED INTER-SATELLITE 5.536 MOBILE SPACE RESEARCH (space-to-Earth) Standard frequency and time signal-satellite (Earth-to-space) 5.536A US258	25.5-27 SPACE RESEARCH (space-to-Earth) Inter-satellite 5.536 Standard frequency and time signal-satellite (Earth-to-space) 5.536A US258	

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Table of Frequency Allocations			34.7-46.9 GHz (EHF)		Page 57
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
34.7-35.2 RADIOLOCATION Space research 5.550 5.549			34.7-35.5 RADIOLOCATION	34.7-35.5 Radiolocation	Private Land Mobile (90)
35.2-35.5 METEOROLOGICAL AIDS RADIOLOCATION 5.549			US360 G117	US360	
35.5-36 METEOROLOGICAL AIDS EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.549 5.549A			35.5-36 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) US360 G117	35.5-36 Earth exploration-satellite (active) Radiolocation Space research (active) US360	
36-37 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) 5.149 5.550A			36-37 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US342 US550A		
37-37.5 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (space-to-Earth) 5.547			37-38 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (space-to-Earth)	37-37.5 FIXED MOBILE except aeronautical mobile US151	Upper Microwave Flexible Use (30)
37.5-38 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile SPACE RESEARCH (space-to-Earth) Earth exploration-satellite (space-to-Earth) 5.547			US151	37.5-38 FIXED FIXED-SATELLITE (space-to-Earth) NG63 MOBILE except aeronautical mobile US151	Satellite Communications (25) Upper Microwave Flexible Use (30)
38-39.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Earth exploration-satellite (space-to-Earth) 5.547			38-38.6 FIXED MOBILE 38.6-39.5	38-39.5 FIXED FIXED-SATELLITE (space-to-Earth) NG63 MOBILE NG175	
39.5-40 FIXED FIXED-SATELLITE (space-to-Earth) 5.516B MOBILE MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite (space-to-Earth) 5.547			39.5-40 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US382 G117	39.5-40 FIXED FIXED-SATELLITE (space-to-Earth) NG63 MOBILE NG175 US382	

Table of Frequency Allocations		200-3000 GHz (EHF)		Page 67
International Table			United States Table	FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table / Non-Federal Table	
200-209 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341 5.563A			200-209 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 5.563A US246	
209-217 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY 5.149 5.341			209-217 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY 5.341 US342	
217-226 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.149 5.341			217-226 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY SPACE RESEARCH (passive) 5.562B 5.341 US342	
226-231.5 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340			226-231.5 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) US246	
231.5-232 FIXED MOBILE Radiolocation			231.5-232 FIXED MOBILE Radiolocation	
232-235 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Radiolocation			232-235 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Radiolocation	
235-238 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) SPACE RESEARCH (passive) 5.563A 5.563B			235-238 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) SPACE RESEARCH (passive) 5.563A 5.563B	
238-240 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE RADIOLOCATION RADIONAVIGATION RADIONAVIGATION-SATELLITE			238-240 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE RADIOLOCATION RADIONAVIGATION RADIONAVIGATION-SATELLITE	

240-241 FIXED MOBILE RADIOLOCATION	240-241 FIXED MOBILE RADIOLOCATION		
241-248 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite 5.138 5.149	241-248 RADIO ASTRONOMY RADIOLOCATION 5.138 US342	241-248 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite 5.138 US342	ISM Equipment (18) Amateur Radio (97)
248-250 AMATEUR AMATEUR-SATELLITE Radio astronomy 5.149	248-250 Radio astronomy US342	248-250 AMATEUR AMATEUR-SATELLITE Radio astronomy US342	Amateur Radio (97)
250-252 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.563A	250-252 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.563A US246		
252-265 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.149 5.554	252-265 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY RADIONAVIGATION RADIONAVIGATION-SATELLITE 5.554 US211 US342		
265-275 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY 5.149 5.563A	265-275 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY 5.563A US342		
275-3000 (Not allocated) 5.565	275-3000 (Not allocated) US565		Amateur Radio (97)

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United States (U.S.) Footnotes

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US52 In the VHF maritime mobile band (156–162 MHz), the following provisions shall apply:

(a) Except as provided for below, the use of the bands 161.9625–161.9875 MHz (AIS 1 with center frequency 161.975 MHz) and 162.0125–162.0375 MHz (AIS 2 with center frequency 162.025 MHz) by the maritime mobile and mobile-satellite (Earth-to-space) services is restricted to Automatic Identification Systems (AIS). The use of

these bands by the aeronautical mobile (OR) service is restricted to AIS emissions from search and rescue aircraft operations. Frequencies in the AIS 1 band may continue to be used by non-Federal base, fixed, and land mobile stations until March 2, 2024.

(b) Except as provided for below, the use of the bands 156.7625–156.7875 MHz (AIS 3 with center frequency 156.775 MHz) and 156.8125–156.8375 MHz (AIS 4 with center frequency 156.825 MHz) by the mobile-satellite service (Earth-to-space) is restricted to the reception of long-range AIS broadcast messages from ships (Message 27; see most recent version of Recommendation ITU–R M.1371). The frequencies 156.775 MHz and 156.825 MHz may continue to be used by non-Federal ship and coast stations for navigation-related port operations or ship movement until August 26, 2019.

(c) The frequency 156.3 MHz may also be used by aircraft stations for the purpose of search and rescue operations and other safety-related communication.

(d) Federal stations in the maritime mobile service may also be authorized as follows: (1) Vessel traffic services under the control of the U.S. Coast Guard on a simplex basis by coast and ship stations on the frequencies 156.25, 156.55, 156.6 and 156.7 MHz; (2) Inter-ship use of the frequency 156.3 MHz on a simplex basis; (3) Navigational bridge-to-bridge and navigational communications on a simplex basis by coast and ship stations on the frequencies 156.375 and 156.65 MHz; (4) Port operations use on a simplex basis by coast and ship stations on the frequencies 156.6 and 156.7 MHz; (5) Environmental communications on the frequency 156.75 MHz in accordance with the national plan; and (6) Duplex port operations use of the frequencies 157 MHz for ship stations and 161.6 MHz for coast stations.

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US115 In the bands 5000–5010 MHz and 5010–5030 MHz, the following provisions shall apply:

(a) In the band 5000–5010 MHz, systems in the aeronautical mobile (R) service (AM(R)S) are limited to surface applications at airports that operate in accordance with international aeronautical standards (*i.e.,* AeroMACS).

(b) The band 5010–5030 MHz is also allocated on a primary basis to the AM(R)S, limited to surface applications at airports that operate in accordance with international aeronautical standards. In making assignments for this band, attempts shall first be made to satisfy the AM(R)S requirements in the bands 5000–5010 MHz and 5091–5150 MHz. AM(R)S systems used in the band 5010–5030 MHz shall be designed and implemented to be capable of operational modification if receiving harmful interference from the radionavigation-satellite service. Finally, notwithstanding Radio Regulation No. 4.10, stations in the AM(R)S operating in this band shall be designed and implemented to be capable of operational modification to reduce throughput and/or preclude the use of specific frequencies in order to ensure protection of radionavigation-satellite service systems operating in this band.

(c) Aeronautical fixed communications that are an integral part of the AeroMACS system in the bands 5000–5010 MHz and 5010–5030 MHz are also authorized on a primary basis.

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US132A In the bands 26.2–26.42 MHz, 41.015–41.665 MHz, and 43.35–44 MHz, applications of radiolocation service are limited to oceanographic radars operating in accordance with ITU Resolution 612 (Rev. WRC–12). Oceanographic radars shall not cause harmful interference to, or claim protection from, non-Federal stations in the land mobile service in the bands 26.2–26.42 MHz and 43.69–44 MHz, Federal stations in the fixed or mobile services in the band 41.015–41.665 MHz, and non-Federal stations in the fixed or land mobile services in the band 43.35–43.69 MHz.

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US231 When an assignment cannot be obtained in the bands between 200 kHz and 525 kHz, which are allocated to aeronautical radionavigation, assignments may be made to aeronautical radiobeacons in the maritime mobile bands at 435–472 kHz and 479–490 kHz, on a secondary basis, subject to the coordination and agreement of those agencies having assignments within the maritime mobile bands which may be affected. Assignments to Federal aeronautical radionavigation radiobeacons in the bands 435–472 kHz and 479–490 kHz shall not be a bar to any required changes to the maritime mobile service and shall be limited to non-voice emissions.

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US246 No station shall be authorized to transmit in the following bands: 73–74.6 MHz, 608–614 MHz, except for medical telemetry equipment [1] and white space devices,[2] 1400–1427 MHz, 1660.5–1668.4 MHz, 2690–2700 MHz, 4990–5000 MHz, 10.68–10.7 GHz, 15.35–15.4 GHz, 23.6–24 GHz, 31.3–31.8 GHz, 50.2–50.4 GHz, 52.6–54.25 GHz, 86–92 GHz, 100–102 GHz, 109.5–111.8 GHz, 114.25–116 GHz, 148.5–151.5 GHz, 164–167 GHz, 182–185 GHz, 190–191.8 GHz, 200–209 GHz, 226–231.5 GHz, 250–252 GHz.

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US511E The use of the band 15.4–15.7 GHz by the radiolocation service is limited to Federal systems requiring a necessary bandwidth greater than 1600 MHz that cannot be accommodated within the band 15.7–17.3 GHz except as described below. In the band 15.4–15.7 GHz, stations operating in the radiolocation service shall not cause harmful interference to, nor claim protection from, radars operating in the aeronautical radionavigation service. Radar systems operating in the radiolocation service shall not be developed solely for operation in the band 15.4–15.7 GHz. Radar systems requiring use of the band 15.4–15.7 GHz for testing, training, and exercises may be accommodated on a case-by-case basis.

US565 The following frequency bands in the range 275–1000 GHz are identified for passive service applications:

—Radio astronomy service: 275–323 GHz, 327–371 GHz, 388–424 GHz, 426–442 GHz, 453–510 GHz, 623–711 GHz, 795–909 GHz and 926–945 GHz;

—Earth exploration-satellite service (passive) and 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.

The use of the range 275–1000 GHz by the passive services does not preclude use of this range by active services. This provision does not establish priority of use in the United States Table of Frequency Allocations, and does not preclude or constrain any active service use or future allocation of frequency bands in the 275–3000 GHz range.

[1] Medical telemetry equipment shall not cause harmful interference to radio astronomy operations in the band 608–614 MHz and shall be coordinated under the requirements found in 47 CFR 95.1119.

[2] White space devices shall not cause harmful interference to radio astronomy operations in the band 608–614 MHz and shall not operate within the areas described in 47 CFR 15.712(h).

Non-Federal Government (NG) Footnotes

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NG8 In the band 472–479 kHz, non-Federal stations in the maritime mobile service that were licensed or applied for prior to [insert effective date of the WRC–12 R&O] may continue to operate on a primary basis, subject to periodic license renewals.

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NG16 In the bands 72–73 MHz and 75.4–76 MHz, frequencies may be authorized for mobile operations in the Industrial/Business Radio Pool, subject to not causing interference to the reception of broadcast television signals on channels 4 and 5.

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NG92 The band 1900–2000 kHz is also allocated on a primary basis to the maritime mobile service in Regions 2 and 3 and to the radiolocation service in Region 2, and on a secondary basis to the radiolocation service in Region 3. The use of these allocations is restricted to radio buoy operations on the open sea and the Great Lakes. Stations in the amateur, maritime mobile, and radiolocation services in Region 2 shall be protected from harmful interference only to the extent that the offending station does not operate in compliance with the technical rules applicable to the service in which it operates.

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PART 15—RADIO FREQUENCY DEVICES

■ 5. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 6. In § 15.113, add paragraph (g) to read as follows:

§ 15.113 Power line carrier systems.

* * * * *

(g) *Special provisions.* An electric power utility entity shall not operate a new or modified power line carrier (PLC) system in the 135.7–137.8 kHz and/or 472–479 kHz bands if a previously coordinated amateur station pursuant to § 97.301(g)(2) of this chapter is located within one kilometer of the transmission lines conducting the PLC signal.

PART 25—SATELLITE COMMUNICATIONS

■ 7. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 319, 332, 605, and 721, unless otherwise noted.

■ 8. In § 25.202, add paragraph (a)(12) to read as follows:

§ 25.202 Frequencies, frequency tolerance, and emission limits.

(a) * * *

(12) The following frequencies are available for use by the mobile-satellite service (Earth-to-space) for the reception of Automatic Identification Systems (AIS) broadcast messages from ships:

156.7625–156.7875 MHz
156.8125–156.8375 MHz
161.9625–161.9875 MHz
162.0125–162.0375 MHz

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

■ 9. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

■ 10. In § 80.203, add paragraph (p) to read as follows:

§ 80.203 Authorization of transmitters for licensing.

* * * * *

(p) As of [insert effective date of this Report and Order], the Commission will no longer accept applications for certification of non-AIS VHF radios that include channels 75 and 76.

§ 80.215 [Amended]

■ 11. In § 80.215, remove footnote 13 from paragraph (e)(1) and remove and reserve paragraph (g)(3).

■ 12. In § 80.357, revise footnote 1 to the table in paragraph (b)(1) to read as follows:

§ 80.357 Working frequencies for Morse code and data transmission.

* * * * *

(b) * * *

(1) * * *

[1] All frequencies in this table are shown in kilohertz. The use of frequencies in the 472–479 kHz band is restricted to public coast stations that were licensed on or before [insert effective date of this R&O].

* * * * *

§ 80.373 [Amended]

■ 13. In § 80.373, the table in paragraph (f) is amended under the heading ''Port Operations'' by removing the entries for channel designator 75 (156.775 MHz) and channel designator 76 (156.825 MHz), including the text of footnote 18; and under the heading ''Noncommercial'' by redesignating footnote 19 which is associated with channel designator 71 (156.575 MHz) as footnote 18.

■ 14. Add § 80.376 under center heading ''Radiodetermination'' to read as follows:

§ 80.376 Radio buoy operations.

Frequencies in the 1900–2000 kHz band are authorized for radio buoy operations under a ship radio station license provided:

(a) The use of these frequencies is related to commercial fishing operations on the open sea and the Great Lakes; and

(b) The output power does not exceed 8 watts and the station antenna height does not exceed 4.6 meters above sea level in a buoy station or 6 meters above the mast of the ship on which it is installed.

■ 15. Revise § 80.393 to read as follows:

§ 80.393 Frequencies for AIS stations.

Automatic Identification Systems (AIS) are a maritime broadcast service. The simplex channels at 156.775 MHz (AIS 3), 156.825 MHz (AIS 4), 161.975 MHz (AIS 1), and 162.025 MHz (AIS 2), each with a 25 kHz bandwidth, may be authorized only for AIS. In accordance with the Maritime Transportation Security Act, the United States Coast Guard regulates AIS carriage requirements for non-Federal Government ships. These requirements are codified at 33 CFR 164.46, 401.20.

§ 80.871 [Amended]

■ 16. In § 80.871, the table in paragraph (d) is amended by removing the entries for channel designator 75 (156.775 MHz) and channel designator 76 (156.825 MHz).

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 17. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, 126 Stat. 156.

■ 18. In § 90.7, add a definition for ''Equivalent Isotropically Radiated Power (EIRP)'' in alphabetical order to read as follows:

§ 90.7 Definitions.

* * * * *

Equivalent Isotropically Radiated Power (EIRP). The product of the power supplied to the antenna and the antenna

gain in a given direction relative to an isotropic antenna (absolute or isotropic gain).

* * * * *

■ 19. Amend § 90.103 as follows:

■ a. In the table in paragraph (b), revise the entries set out below; and

■ b. Add paragraph (c)(3).

The revisions and addition read as follows:

§ 90.103 Radiolocation Service.

* * * * *

(b) * * *

RADIOLOCATION SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation
Kilohertz		
* * *	* * *	*
4438 to 4488	Radiolocation land	3
5250 to 5275	.....do	3
Megahertz		
13.45 to 13.55	.....do	3
16.10 to 16.20	.....do	3
24.45 to 24.65	.....do	3
26.20 to 26.42	.....do	3
41.015 to 41.665	.....do	3
43.35 to 44.00	.....do	3
420 to 450	Radiolocation land or mobile	21
* * *	* * *	*

(c) * * *

(3) Operations in this band are limited to oceanographic radars using transmitters with a peak equivalent isotropically radiated power (EIRP) not to exceed 25 dBW. Oceanographic radars shall not cause harmful interference to, nor claim protection from interference caused by, stations in the fixed or mobile services as specified in § 2.106, footnotes 5.132A, 5.145A, and US132A. See Resolution 612 of the ITU Radio Regulations for international coordination requirements and for recommended spectrum sharing techniques.

* * * * *

■ 20. In § 90.425, revise paragraph (c)(1) and add paragraph (c)(3) to read as follows:

§ 90.425 Station identification.

* * * * *

(c) *Special provisions for identification in the Radiolocation Service.* (1) Stations in the Radiolocation Service are not required to identify except upon special instructions from the Commission or as required by paragraphs (c)(2) and (3) of this section.

* * * * *

(3) Oceanographic radars operating in the bands shown in section 90.103(b) shall transmit a station identification (call sign) on the assigned frequency, in international Morse code at a transmission rate in accordance with paragraph (b)(2) of this section at the end of each data acquisition cycle, but at an interval of no more than 20 minutes.

* * * * *

PART 97—AMATEUR RADIO SERVICE

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

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

■ 22. In § 97.3, revise paragraphs (b)(1) through (11) and add paragraphs (b)(12) through (14) to read as follows:

§ 97.3 Definitions.

(b) * * *

(1) *EHF* (extremely high frequency). The frequency range 30–300 GHz.

(2) *EIRP* (equivalent isotropically radiated power). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna (absolute or isotropic gain).

Note: Divide EIRP by 1.64 to convert to effective radiated power.

(3) *ERP* (effective radiated power) (in a given direction). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

Note: Multiply ERP by 1.64 to convert to equivalent isotropically radiated power.

(4) *HF* (high frequency). The frequency range 3–30 MHz.

(5) *Hz.* Hertz.

(6) *LF* (low frequency). The frequency range 30–300 kHz.

(7) *m.* Meters.

(8) *MF* (medium frequency). The frequency range 300–3000 kHz.

(9) *PEP* (peak envelope power). The average power supplied to the antenna transmission line by a transmitter during one RF cycle at the crest of the modulation envelope taken under normal operating conditions.

(10) *RF.* Radio frequency.

(11) *SHF* (super high frequency). The frequency range 3–30 GHz.

(12) *UHF* (ultra high frequency). The frequency range 300–3000 MHz.

(13) *VHF* (very high frequency). The frequency range 30–300 MHz.

(14) *W.* Watts.

* * * * *

■ 23. In § 97.15, add paragraph (c) to read as follows:

§ 97.15 Station antenna structures.

* * * * *

(c) Antennas used to transmit in the 2200 m and 630 m bands must not exceed 60 meters in height above ground level.

■ 24. In § 97.301, amend the tables in each of paragraphs (b), (c), and (d) as follows:

■ a. Add the sub-heading ''LF'' and the entry for the ''2200 m'' wavelength band; and

■ b. Under the existing sub-heading ''MF'' add the entry for the ''630 m'' wavelength band.

The additions read as follows:

§ 97.301 Authorized frequency bands.

* * * * *

(b) * * *

Wavelength band	ITU Region 1	ITU Region 2	ITU Region 3	Sharing requirements see § 97.303 (paragraph)
LF	kHz	kHz	kHz	
2200 m	135.7–137.8	135.7–137.8	135.7–137.8	(a), (g).
MF	kHz	kHz	kHz	
630 m	472–479	472–479	472–479	(g).
*	*	*	*	* * *

(c) * * *

Wavelength band	ITU Region 1	ITU Region 2	ITU Region 3	Sharing requirements see § 97.303 (paragraph)
LF	kHz	kHz	kHz	
2200 m	135.7–137.8	135.7–137.8	135.7–137.8	(a), (g).
MF	kHz	kHz	kHz	
630 m	472–479	472–479	472–479	(g).
*	*	*	*	* * *

(d) * * *

Wavelength band	ITU Region 1	ITU Region 2	ITU Region 3	Sharing requirements see § 97.303 (paragraph)
LF	kHz	kHz	kHz	
2200 m	135.7–137.8	135.7–137.8	135.7–137.8	(a), (g).
MF	kHz	kHz	kHz	
630 m	472–479	472–479	472–479	(g).
*	*	*	*	* * *

■ 25. In § 97.303, add paragraph (g) to read as follows:

§ 97.303 Frequency sharing requirements.

* * * * *

(g) In the 2200 m and 630 m bands:

(1) Amateur stations in the 135.7–137.8 kHz (2200 m) and 472–479 kHz (630 m) bands shall only operate at fixed locations. Amateur stations shall not operate within a horizontal distance of one kilometer from a transmission line that conducts a power line carrier (PLC) signal in the 135.7–137.8 kHz or 472–479 kHz bands. Horizontal distance is measured from the station's antenna to the closest point on the transmission line.

(2) Prior to commencement of operations in the 135.7–137.8 kHz (2200 m) and/or 472–479 kHz (630 m) bands, amateur operators shall notify the Utilities Telecom Council (UTC) of their intent to operate by submitting their call signs, intended band or bands of operation, and the coordinates of their antenna's fixed location. Amateur stations will be permitted to commence operations after the 30-day period unless UTC notifies the station that its fixed location is located within one kilometer of PLC systems operating in the same or overlapping frequencies.

(3) Amateur stations in the 135.7–137.8 kHz (2200 m) band shall not cause harmful interference to, and shall accept interference from:

(i) Stations authorized by the United States Government in the fixed and maritime mobile services;

(ii) Stations authorized by other nations in the fixed, maritime mobile, and radionavigation service.

(4) Amateur stations in the 472–479 kHz (630 m) band shall not cause harmful interference to, and shall accept interference from:

(i) Stations authorized by the FCC in the maritime mobile service;

(ii) Stations authorized by other nations in the maritime mobile and aeronautical radionavigation services.

(5) Amateur stations causing harmful interference shall take all necessary measures to eliminate such interference—including temporary or permanent termination of transmissions.

* * * * *

■ 26. In § 97.305, amend the table in paragraph (c) as follows:

■ a. Add sub-heading ''LF:'' and two entries for the ''2200 m'' wavelength band; and

■ b. Under existing sub-heading ''MF:'' add two entries for the ''630 m'' wavelength band.

The additions read as follows:

§ 97.305 Authorized emission types.

* * * * *

(c) * * *

Wavelength band	Frequencies	Emission types authorized	Standards see § 97.307(f), paragraph:
LF:			
2200 m	Entire band	RTTY, data	(3).
2200 m	Entire band	Phone, image	(1), (2).
MF:			
630 m	Entire band	RTTY, data	(3).
630 m	Entire band	Phone, image	(1), (2).

* * * * * * *

■ 27. In § 97.313, add paragraphs (k) and (l) to read as follows.

§ 97.313 Transmitter power standards.

* * * * *

(k) No station may transmit in the 135.7–137.8 kHz (2200 m) band with a transmitter power exceeding 1.5 kW PEP or a radiated power exceeding 1 W EIRP.

(l) No station may transmit in the 472–479 kHz (630 m) band with a transmitter power exceeding 500 W PEP or a radiated power exceeding 5 W EIRP, except that in Alaska, stations located within 800 kilometers of the Russian Federation may not transmit with a radiated power exceeding 1 W EIRP.

[FR Doc. 2017–09887 Filed 6–13–17; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 82, No. 113
Wednesday, June 14, 2017

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

DEPARTMENT OF THE TREASURY

5 CFR Chapter XXI

12 CFR Chapters I, V, XV, and XVIII

17 CFR Chapter IV

19 CFR Chapter I

26 CFR Chapter I

27 CFR Chapter I

31 CFR Subtitle A and Chapters I, II, IV Through VIII, IX, and X

48 CFR Chapter 10

Review of Regulations

AGENCY: Department of the Treasury.

ACTION: Request for information.

SUMMARY: On January 30, 2017, the President signed Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, to direct agencies to eliminate two regulations for each new regulation issued and to limit costs for this fiscal year to zero. On February 24, 2017, the President issued Executive Order 13777, Enforcing the Regulatory Reform Agenda, which requires agencies to convene a regulatory reform task force to assist in the implementation of Executive Order 13771. In furtherance of those Executive Orders, this notice invites members of the public to submit views and recommendations for Treasury Department regulations that can be eliminated, modified, or streamlined in order to reduce burdens.

DATES: *Comment due date:* July 31, 2017.

ADDRESSES: Interested persons are invited to submit comments in response to this notice according to the instructions below. All submissions must refer to the document title. Treasury encourages the early submission of comments.

Electronic Submission of Comments. Interested persons must submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department to make comments available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Public Inspection of Comments. In general, all properly submitted comments will be available for inspection and downloading at *http://www.regulations.gov.*

Additional Instructions. In general, comments received, including attachments and other supporting materials, are part of the public record and are made available to the public. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Heidi Cohen, Office of the General Counsel (General Law, Ethics, and Regulation), 202–622–1142.

SUPPLEMENTARY INFORMATION: Executive Order 13777, Enforcing the Regulatory Reform Agenda, requires agencies to convene a regulatory reform task force to assist in the implementation of Executive Order 13771 as well as Executive Orders 12866 and 13563.

The Department is forming such a task force, which will evaluate existing regulations and make recommendations to the Secretary to prioritize their possible repeal, replacement, or modification, consistent with applicable law. The Executive Order 13777 requires the task force to attempt to identify for repeal, replacement or modification regulations that eliminate jobs or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; are inconsistent with the requirements of the Information Quality Act (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision; or derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

Executive Order 13777 encourages agencies to seek input from small businesses, state and local governments, trade associations, and other stakeholders significantly affected by regulations. Accordingly, this notice invites interested members of the public to provide input on those Treasury regulations and guidance that should be modified or eliminated in order to reduce burdens. Commenters should identify the regulation by title and citation to the Code of Federal Regulations and should explain how the regulations could be modified, if appropriate, or explain why the regulation should be eliminated. To the extent available, commenters should provide available data and an explanation of regulatory costs and compliance burdens.

In particular, the Department invites comments on regulations, forms, and guidance documents issued or promulgated by the Internal Revenue Service, the Alcohol and Tobacco Tax and Trade Bureau, the Bureau of the Fiscal Service, Departmental Offices (Office of the Secretary), the Financial Crimes Enforcement Network, the Community Development Financial Institutions Fund, the Office of Foreign Assets Control, and Treasury regulations and guidance issued under the Department's Customs Revenue Function (19 CFR chapter 1).

In its Notice 2017–28, Treasury and IRS invited public comment on recommendations for the 2017–2018 Priority Guidance Plan for tax guidance. That notice included a similar request for input pursuant to Executive Orders 13771 and 13777. Today's request for comments is intended to support and not duplicate those efforts. If commenters have already submitted comments in response to Notice 2017–28, those comments will be shared with and may be used by the Department's task force as it evaluates regulations.

The Department advises that this notice and request for comments is issued for information and policy development purposes. Although the Department encourages responses to this notice, such comments do not bind the Department to taking any further actions related to the submission.

Dated: June 8, 2017.

Brian Callanan,

Acting General Counsel.

[FR Doc. 2017–12319 Filed 6–13–17; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2017–0019]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/ALL–025 Law Enforcement Authority in Support of the Protection of Property Owned, Occupied, or Secured by the Department of Homeland Security System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of an updated and reissued system of records pursuant to the Privacy Act of 1974 for the ''Department of Homeland Security/ALL–025 Law Enforcement Authority in Support of the Protection of Property Owned, Occupied, or Secured by the Department of Homeland Security System of Records'' and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from additional provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before July 14, 2017.

ADDRESSES: You may submit comments, identified by docket number DHS–2017–0019, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general and privacy questions please contact: Jonathan R. Cantor, (202–343–1717), Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) proposes a new Privacy Act exemption to an existing DHS system of records titled, ''DHS/ALL–025 Law Enforcement Authority in Support of the Protection of Property Owned, Occupied, or Secured by DHS System of Records.'' The DHS/ALL–025 Law Enforcement Authority in Support of the Protection of Property Owned, Occupied, or Secured by DHS System of Records covers the collection, use, maintenance, and dissemination of records relating to the protection of property owned, occupied, or secured by DHS. The existing Privacy Act exemptions that became effective upon publication of the Final Rule at 74 FR 50901, continue to apply to this system of records. DHS is issuing a Notice of Proposed Rulemaking to add a new exemption from certain provisions of the Privacy Act.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, and similarly, the Judicial Redress Act (JRA) provides a statutory right to covered persons to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming an additional exemption from certain requirements of the Privacy Act for DHS/ALL–025 Law Enforcement Authority in Support of the Protection of Property Owned, Occupied, or Secured by DHS System of Records, under 5 U.S.C. 552a(j)(2). Information in DHS/ALL–025 Law Enforcement Authority in Support of the Protection of Property Owned, Occupied, or Secured by DHS System of Records relates to official DHS law enforcement activities. This new exemption is needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the additional exemptions are required to preclude subjects of these activities from frustrating ongoing operations; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS's ability to obtain information from third parties and other sources; to protect the privacy of third parties; and to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

In appropriate circumstances, when compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of an updated system of records for DHS/ALL–025 Law Enforcement Authority in Support of the Protection of Property Owned, Occupied, or Secured by DHS System of Records is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend chapter I of title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301.

■ 2. In appendix C to part 5, revise paragraph 38 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

38. The DHS/ALL–025 Law Enforcement Authority in Support of the Protection of Property Owned or Occupied by the Department of Homeland Security system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/ALL–025 Law Enforcement Authority in Support of the Protection of Property Owned or Occupied by the Department of Homeland Security system is a repository of information held by DHS in connection with its several and varied missions and functions, including: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and intelligence activities. The DHS/ALL–025 Law Enforcement Authority in Support of the Protection of Property Owned or Occupied by the Department of Homeland Security system contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8); (f), (g)(1). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). When a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here. Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to the existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: June 8, 2017.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2017–12253 Filed 6–13–17; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0338; Directorate Identifier 2016–NM–153–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL–600–2A12 (CL–601 Variant) and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes. This proposed AD was prompted by a determination that the bushing holes on the engine mount rib might not conform to the engineering drawings and that certain inspections of the engine mount rib must be included in the airworthiness limitations section (ALS) of the Instructions for Continued Airworthiness (ICA). This proposed AD would require revising the maintenance or inspection program to incorporate certain airworthiness limitation items (ALIs). We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 31, 2017.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0338; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, New York Aircraft Certification Office (ACO), FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0338; Directorate Identifier 2016–NM–153–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2015–09R1, dated June 29, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–2A12 (CL–601 Variant), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes. The MCAI states:

> The aeroplane manufacturer has determined that the bushing holes on the engine mount rib may not conform to the engineering drawings. Non-conforming bushing holes could increase loading on adjacent fasteners, resulting in premature fatigue cracking of the engine mount rib.
>
> In addition, it was also discovered that the inspection requirements for the engine mount rib were not listed in the Airworthiness Limitations Section of the Instructions for Continued Airworthiness.
>
> Failure of the engine mount rib could compromise the structural integrity of the engine mount and could lead to subsequent detachment of an engine.
>
> A new Time Limits/Maintenance Checks (TLMC) Airworthiness Limitations (AWL) task is introduced to ensure that any fatigue cracking of the engine mount rib is detected and corrected.
>
> The original issue of this [Canadian] AD mandated the incorporation of a new TLMC AWL task [into the maintenance or inspection program, as applicable].
>
> Revision 1 of this [Canadian] AD is issued to remove model CL–600–1A11 (600) aeroplanes from the Applicability section of the [Canadian] AD since this model was incorrectly included in the original issue.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0338.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

This AD requires revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance under the provisions of paragraph (i)(1) of this proposed AD. The request should include a description of changes to the required actions that will ensure the continued damage tolerance of the affected structure.

Costs of Compliance

We estimate that this proposed AD affects 129 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revision of maintenance or inspection program ...	1 work-hour × $85 per hour = $85	$0	$85	$10,965

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority

because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2017–0338; Directorate Identifier 2016–NM–153–AD.

(a) Comments Due Date

We must receive comments by July 31, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Bombardier, Inc., airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category.

(1) Bombardier, Inc., Model CL–600–2A12 (CL–601) airplanes, having serial numbers (S/Ns) 3001 through 3066 inclusive.

(2) Bombardier, Inc., Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes, having S/Ns 5001 through 5194 inclusive.

(3) Bombardier, Inc., Model CL–600–2B16 (CL–604 Variant) airplanes, having S/Ns 5301 through 5665 inclusive, and 5701 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 05, Periodic inspections.

(e) Reason

This AD was prompted by a determination that the bushing holes on the engine mount rib may not conform to the engineering drawings and that certain inspections of the engine mount rib must be included in the airworthiness limitations section (ALS) of the Instructions for Continued Airworthiness (ICA). We are issuing this AD to detect and correct failure of an engine mount rib. Failure of an engine mount rib could compromise the structural integrity of the engine mount and could lead to subsequent detachment of an engine.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 60 days after the effective date of this AD: Revise the maintenance or inspection program, as applicable, to incorporate maintenance tasks, in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA.

Note 1 to paragraph (g) of this AD: Applicable information on tasks required by paragraph (g) of this AD can be found in Chapter 5 of Time Limits/Maintenance Checks (TLMC) Manual PSP 601–5 (for Model CL–600–2A12 (CL–601 Variant) airplanes), TLMC Manual PSP 601A–5 (for CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes), TLMC Manual CL–604 (for Model CL–600–2B16 (CL–604 Variant) airplanes, S/Ns 5301 through 5665 inclusive), and TLMC Manual CL–605 (for Model CL–600–2B16 (CL–604 Variant) airplanes, S/Ns 5701 and subsequent).

(h) No Alternative Actions and/or Intervals

After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and/or intervals may be used, unless the actions and/or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2015–09R1, dated June 29, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0338.

(2) For more information about this AD, contact Aziz Ahmed, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, New York Aircraft Certification Office (ACO), FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; fax 516–794–5531.

Issued in Renton, Washington, on May 8, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–09846 Filed 6–13–17; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2015–0833; FRL–9962–49–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Clean Air Act Requirements for Vehicle Inspection and Maintenance and Nonattainment New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Texas for the

2008 8-hour ozone national ambient air quality standards (NAAQS). The SIP revision pertains to CAA 2008 ozone NAAQS requirements for vehicle inspection and maintenance and nonattainment new source review in the Dallas/Fort Worth ozone nonattainment area.

DATES: Written comments should be received on or before July 14, 2017.

ADDRESSES: Submit your comments, identified by EPA–R06–OAR–2015–0833, at *http://www.regulations.gov* or via email to *young.carl@epa.gov.* For additional information on how to submit comments see the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carl Young, (214) 665–6645, *young.carl@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct rule without prior proposal because the Agency views this as noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action no further activity is contemplated. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: June 1, 2017.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2017–12211 Filed 6–13–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409 and 488

[CMS–1686–N]

RIN 0938–AT17

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities: Revisions to Case-Mix Methodology; Extension of Comment Period

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Advance notice of proposed rulemaking with comment; extension of comment period.

SUMMARY: This document extends the comment period for the advance notice of proposed rulemaking with comment entitled ''Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities: Revisions to Case-mix Methodology'' that appeared in the May 4, 2017 **Federal Register** (82 FR 20980) (the ANPRM). The comment period for the ANPRM, which would end on June 26, 2017, is extended until August 25, 2017.

DATES: The comment period for the ANPRM (82 FR 20980) is extended to 5 p.m., eastern daylight time, on August 25, 2017.

ADDRESSES: In commenting, please refer to file code CMS–1686–ANPRM. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Within the search bar, enter the Regulation Identifier Number associated with this regulation, RIN 0938–AT17, and then click on the ''Comment Now'' box.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1686–ANPRM, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1686–ANPRM, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

FOR FURTHER INFORMATION CONTACT: John Kane, (410) 786–0557.

SUPPLEMENTARY INFORMATION: In the advance notice of proposed rulemaking with comment that appeared in the **Federal Register** on May 4, 2017 entitled, ''Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities: Revisions to Case-mix Methodology'' (82 FR 20980) (the ANPRM), we solicited public comments on potential options we may consider for revising certain aspects of the existing skilled nursing facility (SNF) prospective payment system (PPS) payment methodology to improve its accuracy, based on the results of our SNF Payment Models Research (SNF PMR) project. In particular, in the ANPRM, we sought comments on the possibility of proposing to replace the SNF PPS' existing case-mix classification model, the Resource Utilization Groups, Version 4 (RUG–IV), with a new model, the Resident Classification System, Version I (RCS–I). We also discussed options for how such a change could be implemented, as well

as a number of other policy changes we may consider proposing to complement implementation of RCS–I.

We have received an inquiry from professional associations and national industry organizations regarding the 60-day comment period for the ANPRM. These organizations stated that by providing all stakeholders additional time to review and comment upon the ANPRM, they will be able to conduct a more comprehensive review of the refinements we are considering to the SNF PPS payment methodology and provide more meaningful comments. In order to maximize the opportunity for the public to provide meaningful input to CMS, we believe that it is important to allow additional time for the public to prepare comments on the ANPRM. In addition, we believe that granting an extension to the public comment period in this instance would further our overall objective to obtain public input on the potential refinements to the SNF PPS we are considering. Therefore, we are extending the comment period for the ANPRM for an additional 60 days. This document announces the extension of the public comment period for the ANPRM until August 25, 2017.

Dated: June 7, 2017.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2017–12324 Filed 6–13–17; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–BF86

Fisheries of the Northeastern United States; Amendment 6 to the Tilefish Fishery Management Plan

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council has submitted Amendment 6 to the Tilefish Fishery Management Plan for review and approval by the Secretary of Commerce. We are requesting comments from the public on the amendment. Amendment 6 would establish management measures for the blueline tilefish fishery north of the Virginia/North Carolina border, including: Permitting, recordkeeping, and reporting requirements; trip limits for both the commercial and recreational sectors of the fishery; and the process for setting specifications and annual catch limits. In addition, this action would set 2017 harvest limits.

DATES: Comments must be received on or before August 14, 2017.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2016–0025, by either of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0025,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Blueline Tilefish Amendment.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted to *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 6, and of the draft Environmental Assessment and preliminary Regulatory Impact Review (EA/RIR), are available from the Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. The EA/RIR is also accessible via the Internet at: *www.greateratlantic.fisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978–281–9341.

SUPPLEMENTARY INFORMATION: We are soliciting public comments on Amendment 6 and its incorporated documents through the end of the comment period stated in this notice of availability. We will publish a proposed rule in the **Federal Register** that would implement the amendment's management measures for additional public comment, following NMFS's evaluation of the proposed rule under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability to be considered in the approval/disapproval decision on the amendment. All comments received by August 14, 2017, whether specifically directed to the amendment or the proposed rule will be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received by close of business on the last day of the comment period. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 6, including those postmarked or otherwise transmitted by the last day of the comment period.

The Mid-Atlantic Fishery Management Council developed this amendment to establish management measures for the blueline tilefish fishery north of the Virginia/North Carolina border. This proposed action would establish the management framework for this fishery including: Permitting, recordkeeping, and reporting requirements; trip limits for both the commercial and recreational sectors of the fishery; and the process for setting specifications and annual catch limits. In addition, this action would set harvest quotas and commercial and recreational management measures for the 2017 fishing year. Additional details of the proposed measures are available in the amendment document and the proposed rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 9, 2017.

Margo B. Schulze-Haugen,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–12307 Filed 6–13–17; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 82, No. 113
Wednesday, June 14, 2017

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 COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is amending its final results of the administrative review of the antidumping duty order on certain new pneumatic off-the-road tires (OTR Tires) from the People's Republic of China (PRC) for the period of September 1, 2014, through August 31, 2015, to correct a ministerial error. The amended final weighted-average dumping margins for the reviewed firms are listed below in the section entitled, ''Amended Final Results.''

DATES: Effective June 14, 2017.

FOR FURTHER INFORMATION CONTACT: Mandy Mallott, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone 202–482–6430.

SUPPLEMENTARY INFORMATION:

Background

On April 13, 2017, the Department issued the final results of the administrative review of the 2014–2015 period of review.[1] On April 14, 2017, the Department disclosed to interested parties its calculations for the final results.[2] On April 24, 2017, the Department received a timely-filed ministerial error allegation from the petitioners [3] regarding the Department's margin calculation for Xugong, one of the mandatory respondents in the review.[4] The Department also received a timely-filed ministerial error allegation from Xugong regarding the draft final liquidation instructions released with the *Final Results.*[5]

Scope of the Order

The merchandise covered by this order includes new pneumatic tires designed for off-the-road and off-highway use, subject to certain exceptions. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.80.1010, 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.70.00.10, 4011.70.00.50 4011.80.20.20, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, 4011.94.80.00, 8716.90.5056, 8716.90.5059, 4011.80.10.10, 4011.80.10.20, 4011.80.20.10, 4011.80.80.10, and 4011.80.80.20. The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive. For a complete description of the scope of the order, *see* the Issues and Decision Memorandum accompanying the *Final Results.*

Ministerial Error

Section 751(h) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.224(f) define a ''ministerial error'' as an error ''in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any similar type of unintentional error which the Secretary considers ministerial.'' We analyzed the petitioners' ministerial error comments and determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(e) and (f), that we made a ministerial error in our calculation of Xugong's margin for the *Final Results* by inadvertently using the incorrect sales figures as a denominator to devise the indirect sales expense ratio.[6] We also made an error in the draft liquidation instructsions. For a detailed discussion of the Department's ministerial error determination, *see* Ministerial Error Memorandum.

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are correcting this error in the calculation of Xugong's weighted-average dumping margin by using the proper denominator in the calculation of indirect sales expenses,[7] and are, thus, amending the *Final Results.* The revised weighted-average dumping margin for Xugong is detailed below.

Additionally, as a result of our revision to Xugong's margin, the Department has also revised the dumping margin for companies not individually examined in the review. As we explained in the *Final Results,*[8] the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not individually examined in an administrative review. Consistent with section 735(c)(5)(A) of the Act, the Department's usual practice has been to determine the dumping margin for companies not individually examined by averaging the weighted-average dumping margins for the individually examined respondents, excluding rates

[1] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015,* 82 FR 18733 (April 21, 2017) (*Final Results*) and accompanying Issues and Decision Memorandum.

[2] Xuzhou Xugong Tyres Co., Ltd. (Xugong) was the only mandatory respondent for which the Department calculated a margin. *See* the Department's memorandum, ''2014–2015 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Final Results Margin Calculation for Xuzhou Xugong Tyres Co., Ltd.,'' dated April 12, 2017 (Xugong Final Analysis Memorandum).

[3] Titan Tire Corporation (Titan) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (the USW) (collectively, the petitioners).

[4] *See* Petitioners' Letter, ''Petitioners' Ministerial Error Comments,'' dated April 24, 2017.

[5] *See* Xugong's letter, ''Allegation of Ministerial Error for the Final Results of Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China,'' dated April 21, 2017 (Xugong Comments).

[6] *See* the Department's memorandum, ''2014–2015 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Ministerial Error Allegation for the Final Results,'' dated concurrently with this notice (Ministerial Error Memorandum).

[7] *See* Ministerial Error Memorandum; *see also* memorandum, ''Analysis of the Amended Final Results Margin Calculation for Xuzhou Xugong Tyres Co., Ltd.,'' dated concurrently with this notice (Xugong Amended Final Analysis Memo).

[8] *See Final Results,* 82 FR at 18734.

that are zero, de minimis, or based entirely on facts available.[9] Because Xugong's revised weighted-average dumping margin is above *de minimis* and not based entirely on facts available, consistent with the Department's practice, we have assigned to companies not individually examined the weighted-average dumping margin calculated for Xugong as the separate rate for this review. The revised weighted-average dumping margins for those companies are detailed below.

Amended Final Results

As a result of correcting this ministerial error, we determine that the following weighted-average dumping margins exist for the POR:

Exporter	Weighted-average dumping margin (percent)
Xuzhou Xugong Tyres Co., Ltd., Armour Rubber Company Ltd., or Xuzhou Hanbang Tyre Co., Ltd	33.14
Shiyan Desizheng Industry & Trade Co., Ltd	33.14
Qingdao Jinhaoyang International Co., Ltd	33.14
Sailun Jinyu Group Co., Ltd	33.14
Weifang Jintongda Tyre Co., Ltd	33.14
Zhongce Rubber Group Company Limite	33.14
Weihai Zhongwei Rubber Co., Ltd	33.14
Qingdao Qihang Tyre Co., Ltd.[10]	33.14
Qingdao Free Trade Zone Full-World International Trading Co., Ltd	33.14
Trelleborg Wheel Systems (Xingtai) China, Co. Ltd[11]	33.14

The Department's determination in the *Final Results* that Guizhou Tyre Co., Ltd. (GTC) and Guizhou Tyre Import and Export Co., Ltd. (GTCIE),[12] Aeolus Tyre Co., Ltd., and Tianjin Leviathan International Trade Co., Ltd., are part of the PRC-wide entity remains unchanged.[13]

Disclosure

We intend to disclose the calculations performed regarding these amended final results within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1).[14] The Department intends to issue assessment instructions directly to CBP 15 days after the date of publication of these amended final results of administrative review.

For Xugong, the Department calculated importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of sales, in accordance with 19 CFR 351.212(b)(1). For customers or importers of Xugong for which we do not have entered values, we calculated importer- (or customer-) specific antidumping duty assessment amounts based on the ratio of the total amount of dumping duties calculated for the examined sales of subject merchandise to the total sales quantity of those same sales.[15] For customers or importers of Xugong for which we received entered-value information, we have calculated importer- (or customer-) specific antidumping duty assessment rates based on importer- (or customer-) specific *ad valorem* rates.[16] Where an importer- or (customer-) specific *ad valorem* rate is greater than *de minimis,* the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[17] For the non-examined separate rate companies, we will instruct CBP to liquidate all appropriate entries at 33.14 percent. For those entities that are subject to this review that the Department has determined are part of the PRC-wide entity (*i.e.,* GTC and GTCIE, Aeolus Tyre Co., Ltd., and Tianjin Leviathan International Trade Co., Ltd.), we will instruct CBP to liquidate all appropriate entries at the PRC-wide rate of 105.31 percent.[18] Pursuant to a refinement in the Department's non-market economy (NME) practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate.[19] In addition, if the Department determines that an exporter under review had no shipments of subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after April 21, 2017, the publication date of the *Final Results* of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be equal to the weighted-average dumping margin identified in the ''Amended Final Results'' section of this notice, above; (2) for previously investigated or reviewed PRC and non-PRC exporters that are not under review in this segment of the proceeding but that received a separate rate in a previous segment, the cash deposit rate will continue to be the exporter-specific rate (or exporter-producer chain rate) published for the most recently completed segment of this proceeding in which the exporter was reviewed; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 105.31 percent; [20] and (4) for all non-PRC exporters of subject merchandise which have not received

[9] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007).

[10] The Department intended to grant Qingdao Qihang Tyre Co., Ltd. a separate rate in the *Final Results. See* Qihang's December 6, 2015 Separate Rate Certification. However, we incorrectly referred to this company as ''Qingdao Qihang Tyre Co.,'' in the *Final Results* and accompanying Issues and Decision Memorandum. Accordingly, we have corrected the name of this company in these *Amended Final Results.*

[11] In the *Final Results* the Department granted Trelleborg Wheel Systems (Xingtai) China, Co. Ltd. (TWS) a separate rate. However, we note that TWS is also known as Trelleborg Wheel Systems (Xingtai) Co., Ltd. *See* TWS's November 12, 2105 Entry of Appearance and TWS's November 20, 2015 Separate Rate Certification.

[12] We incorrectly referred to the this company as ''Guizhou Tyre Import and Export Corporation,'' and have corrected the name in these *Amended Final Results.*

[13] *See Final Results,* 82 FR at 18735.

[14] *See Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8103 (February 14, 2012) (''*NME Antidumping Proceedings*'').

[15] *See* 19 CFR 351.212(b)(1).

[16] *Id.*

[17] *Id.*

[18] The PRC-wide rate was determined in *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 80 FR 20197 (April 15, 2015).

[19] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[20] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 80 FR 20197 (April 15, 2015).

their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping 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 Secretary's presumption that reimbursement of the antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these amended final results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: June 7, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–12303 Filed 6–13–17; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–937]

Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) published the *Preliminary Results* of the seventh administrative review of the antidumping duty order on citric acid and certain citrate salts (citric acid) from the People's Republic of China (PRC) on February 8, 2017. The period of review (POR) for the administrative review is May 1, 2015, through April 30, 2016. The review was initiated with respect to twenty companies. After rescinding the review with respect to RZBC Co., Ltd., RZBC Import & Export Co., Ltd., and RZBC (Juxian) Co., Ltd. (collectively, RZBC) at the *Preliminary Results,* seventeen companies remain under review. The Department finds that fifteen companies, including mandatory respondent Laiwu Taihe Biochemistry Co., Ltd. (Taihe), are part of the PRC-wide entity, and two companies had no shipments of subject merchandise during the POR. We gave interested parties an opportunity to comment on the *Preliminary Results.* No parties commented. Our final results remain unchanged from the *Preliminary Results.*

DATES: Effective June 14, 2017.

FOR FURTHER INFORMATION CONTACT: Krisha Hill, Office IV, Enforcement & Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4037.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2017, the Department published the *Preliminary Results.*[1] We invited interested parties to submit comments on the *Preliminary Results,* but we received no comments.

Scope of the Order

The products covered by the order include the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.[2]

Final Determination of No Shipments

In the *Preliminary Results,* the Department determined Niran (Thailand) Co., Ltd. (Niran) and Niran Biochemical Limited (Niran Biochemical) had no reviewable transactions during the POR.[3] We received no comments concerning our finding of no shipments by Niran and Niran Biochemical. In these final results of review, we continue to find that Niran and Niran Biochemical had no shipments of subject merchandise during the POR.

Separate Rates

The Department considers fifteen companies listed in the *Initiation Notice,* including Taihe, to be part of the PRC-wide entity. Because Taihe did not respond to the Department's original questionnaire and did not provide separate rate information, Taihe has not established its eligibility for separate rate status. Furthermore, the remaining fourteen companies failed to provide separate rate applications or separate rate certifications necessary to establish their eligibility for a separate rate.[4] Therefore, the Department determines that these fifteen companies, including Taihe, are not eligible for a separate rate and are part of the PRC-wide entity. Accordingly, the Department determined a rate consistent with the Department's current practice regarding conditional review of the PRC-wide entity.[5]

[1] *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Preliminary Partial Rescission of Antidumping Duty Administrative Review; 2015–2016,* 82 FR 9722 (February 8, 2017) (*Preliminary Results*).

[2] *See Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Antidumping Duty Orders,* 74 FR 25703 (May 29, 2009) for a full description of the scope of the order.

[3] *See Preliminary Results,* 82 FR at 9722.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 44260, 44265 (July 7, 2016) (*Initiation Notice*).

[5] *See Preliminary Results* and accompanying Decision Memorandum at 4. *See also Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65970 (November 4, 2013). Under this practice, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity, the entity is not under review and the entity's rate is not subject to change.

Final Results of Review

The Department determines that the following companies are part of the PRC-wide entity: (1) Taihe, (2) Anhui BBCA International Co., Ltd., (3) BCH Chemical International Limited, (4) China Chem Source (HK) Co., Ltd., (5) COFCO Biochemical AnHui Co., Ltd., (6) Jiangsu Guoxin Union Energy Co., Ltd., (7) Kaifeng Chemical Co., Ltd., (8) Qingdao Chongzhi International, (9) Qingdao Samin Chemical Co., Ltd., (10) Shanghai Fenhe International Co., Ltd., (11) Sunshine Biotech International Co., Ltd., (12) Tianjin Kaifeng Chemical Co., Ltd., (13) TTCA Co., Ltd., (14) Weifang Ensign Industry Co., Ltd., and (15) Yixing-Union Biochemical Co., Ltd.

Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[6] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. The Department intends to instruct CBP to liquidate entries of subject merchandise from the PRC-wide entity, including entries of subject merchandise from Taihe, at 156.87 percent (the PRC-wide rate).[7] For Niran and Niran Biochemical, which the Department determined had no shipments during the POR, all suspended entries will be liquidated at the assessment rate for the PRC-wide entity.[8]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this AR for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act): (1) For previously investigated or reviewed exporters of merchandise from the PRC which are not under review in this segment of the proceeding but which have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (2) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the PRC-wide entity, 156.87 percent; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the exporter(s) of merchandise from the PRC that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(d) and 351.221(b)(5).

Dated: June 8, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–12301 Filed 6–13–17; 8:45 am]

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[6] *See* 19 CFR 351.212(b)(1).

[7] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[8] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

EU-U.S. Privacy Shield; Invitation for Applications for Inclusion on the List of Arbitrators

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice; invitation for applications.

SUMMARY: Under the EU-U.S. Privacy Shield Framework, the U.S. Department of Commerce (DOC) and the European Commission have committed to implement an arbitration mechanism to provide European individuals with the ability to invoke binding arbitration to determine, for residual claims, whether an organization has violated its obligations under the Privacy Shield Framework. The DOC and the European Commission will work together to implement the arbitration mechanism, including by jointly developing a list of at least 20 arbitrators. Parties to a binding arbitration under this Privacy Shield mechanism may only select arbitrators from this list. This notice announces the opportunity to apply for inclusion on the list of arbitrators developed by the DOC and the European Commission.

DATES: Applications should be received by July 14, 2017.

ADDRESSES: Please submit applications to Nasreen Djouini at the U.S. Department of Commerce, either by email at *Nasreen.Djouini@trade.gov,* or by fax at: 202–482–5522. More information on the arbitration mechanism may be found at *https://www.privacyshield.gov/article?id=ANNEX-I-introduction.*

FOR FURTHER INFORMATION CONTACT: Nasreen Djouini, International Trade Administration, 202–482–6259 or *Nasreen.Djouini@trade.gov.*

SUPPLEMENTARY INFORMATION: The EU-U.S. Privacy Shield Framework was designed by the U.S. Department of Commerce (DOC) and the European Commission (Commission) to provide companies on both sides of the Atlantic with a mechanism to comply with data protection requirements when transferring personal data from the European Union to the United States in support of transatlantic commerce. On July 12, 2016, the Commission deemed the EU-U.S. Privacy Shield Framework (Privacy Shield) adequate to enable data transfers under EU law, and on August 1, 2016, the DOC began accepting self-certifications from U.S. companies to join the program (81 FR 47752; July 22, 2016). For more information on the Privacy Shield, visit *www.privacyshield.gov.*

As described in Annex I of the Privacy Shield, the DOC and the Commission have committed to implement an arbitration mechanism to provide European individuals with the ability to invoke binding arbitration to determine, for residual claims, whether an organization has violated its obligations under the Privacy Shield. Organizations voluntarily self-certify to

the Privacy Shield and, upon certification, the commitments the organization has made to comply with the Privacy Shield become legally enforceable under U.S. law. Organizations that self-certify to the Privacy Shield commit to binding arbitration of residual claims if the individual chooses to exercise that option. Under the arbitration option, a Privacy Shield Panel (consisting of one or three arbitrators, as agreed by the parties) has the authority to impose individual-specific, non-monetary equitable relief (such as access, correction, deletion, or return of the individual's data in question) necessary to remedy the violation of the Privacy Shield only with respect to the individual. The parties will select the arbitrators from the list of arbitrators described below.

The DOC and the European Commission seek to develop a list of at least 20 arbitrators. To be eligible for inclusion on the list, applicants must be admitted to practice law in the United States and have expertise in both U.S. privacy law and EU data protection law. Applicants shall not be subject to any instructions from, or be affiliated with, any Privacy Shield organization, or the U.S., EU, or any EU Member State or any other governmental authority, public authority or enforcement authority.

Eligible individuals will be evaluated on the basis of independence, integrity, and expertise:

Independence:

- Freedom from bias and prejudice.

Integrity:

- Held in the highest regard by peers for integrity, fairness and good judgment.
- Demonstrates high ethical standards and commitment necessary to be an arbitrator.

Expertise:

Required:

- Admission to practice law in the United States.
- Level of demonstrated expertise in U.S. privacy law and EU data protection law.

Other expertise that may be considered includes any of the following:

- Relevant educational degrees and professional licenses.
- Relevant professional or academic experience or legal practice.
- Relevant training or experience in arbitration or other forms of dispute resolution

Evaluation of applications for inclusion on the list of arbitrators will be undertaken by the DOC and the Commission. Selected applicants will remain on the list for a period of 3 years, absent exceptional circumstances, change in eligibility, or for cause, renewable for one additional period of 3 years.

The DOC is in the process of selecting an administrator for Privacy Shield arbitrations.[1] Among other things, once selected, the Administrator will facilitate arbitrator fee arrangements, including the collection and timely payment of arbitrator fees and other expenses. Arbitrators are expected to commit their time and effort when included on the Privacy Shield List of Arbitrators and to take reasonable steps to minimize the costs or fees of the arbitration.

Arbitrators will be subject to a code of conduct consistent with Annex I of the Privacy Shield Framework and generally accepted ethical standards for arbitrators. The DOC and the Commission agreed to adopt an existing, well-established set of U.S. arbitral procedures to govern the arbitral proceedings, subject to considerations identified in Annex I of the Privacy Shield Framework, including that materials submitted to arbitrators will be treated confidentially and will only be used in connection with the arbitration. For more information, please visit *https://www.privacyshield.gov/article?id=G-Arbitration-Procedures* where you can find information on the arbitration procedures.

Applications

Eligible individuals who wish to be considered for inclusion on the EU-U.S. Privacy Shield List of Arbitrators are invited to submit applications. Applications must be typewritten and should be headed ''Application for Inclusion on the EU-U.S. Privacy Shield List of Arbitrators.'' Applications should include the following information, and each section of the application should be numbered as indicated:

—Name of applicant.

—Address, telephone number, and email address.

1. Independence
   —Description of the applicant's affiliations with any Privacy Shield organization, or the U.S., EU, any EU Member State or any other governmental authority, public authority, or enforcement authority.
2. Integrity
   —On a separate page, the names, addresses, telephone, and fax numbers of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, and judgment.
   —Description of the applicant's willingness and ability to make time commitments necessary to be an arbitrator.
3. Expertise
   —Demonstration of admittance to practice law in the United States.
   —Relevant academic degrees and professional training and licensing.
   —Current employment, including title, description of responsibility, name and address of employer, and name and telephone number of supervisor or other reference.
   —Employment history, including the dates and addresses of each prior position and a summary of responsibilities.
   —Description of expertise in U.S. privacy law and EU data protection law.
   —Description of training or experience in arbitration or other forms of dispute resolution, if applicable.
   —A list of publications, testimony, and speeches, if any, concerning U.S. privacy law and EU data protection law, with copies appended.

Paperwork Reduction Act

OMB has reviewed and approved this information collection on an emergency basis as of [X DATE]. The emergency approval is only valid for 180 days. ITA will submit a request for a 3-year approval through OMB's general PRA clearance process. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

Written comments regarding the burden estimate for this data collection requirement, or any other aspect of this data collection, to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the International Trade Administration via email at *oira_submission@omb.eop.gov* or via fax at (202) 395–5806 (this is not a toll-free number).

Public Disclosure

Applications will be covered by the Department of Commerce's Privacy Act

[1] For more information about the selection process and the role of the administrator, see *https://www.privacyshield.gov/Arbitration-Fact-Sheet.*

System of Records Notice 23. Submission of your application will be considered written consent to share your information with the European Commission to enable joint development of the list of arbitrators.

Dated: June 9, 2017.

Alysha Taylor,

Acting Deputy Assistant Secretary for Services, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2017–12370 Filed 6–13–17; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–815]

Finished Carbon Steel Flanges From Spain: Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (the ITC), the Department is issuing an antidumping duty order on finished carbon steel flanges from Spain.

DATES: June 14, 2017.

FOR FURTHER INFORMATION CONTACT: Mark Flessner at (202) 482–6312, AD/CVD Operations Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on April 17, 2017, the Department published its affirmative final determination in the less-than-fair-value (LTFV) investigation of finished carbon steel flanges from Spain.[1] On June 7, 2017, the ITC notified the Department of its final affirmative determination, pursuant to section 735(d) of the Act, that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of the LTFV imports of finished carbon steel flanges from Spain.[2]

Scope of the Order

The merchandise covered by this order is finished carbon steel flanges from Spain.[3]

Antidumping Duty Order

As stated above, on June 7, 2017, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination that the industry in the United States producing finished carbon steel flanges is materially injured by reason of the LTFV imports of finished carbon steel flanges from Spain.[4] Therefore, in accordance with section 735(c)(2) of the Act, we are issuing this antidumping duty order. Because the ITC determined that imports of finished carbon steel flanges from Spain are materially injuring a U.S. industry, unliquidated entries of such merchandise from Spain entered, or withdrawn from warehouse, for consumption are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the NV of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of finished carbon steel flanges from Spain. Antidumping duties will be assessed on unliquidated entries of finished carbon steel flanges from Spain entered, or withdrawn from warehouse, for consumption on or after February 8, 2017, the date of publication of the *Preliminary Determination,*[5] but will not include entries occurring after the expiration of the provisional measures period and before publication in the **Federal Register** of the ITC's final injury determination, as further described below.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation on all relevant entries of finished carbon steel flanges from Spain. These instructions suspending liquidation will remain in effect until further notice.

We will also instruct CBP to require cash deposits for estimated antidumping duties equal to the estimated weighted-average dumping margins indicated below. Accordingly, effective on the date of publication in the **Federal Register** of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated weighted-average dumping margins listed below.[6] The ''all-others'' rates apply to all producers or exporters not specifically listed.

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. We received no such request. In the underlying investigation, the Department published the *Preliminary Determination* on February 8, 2017. Therefore, the unextended period, beginning on the date of publication of the *Preliminary Determination,* ended on June 8, 2017. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of finished carbon steel flanges from Spain entered, or withdrawn from warehouse, for consumption after June 8, 2017, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC's injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's determination in the **Federal Register**.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins for this antidumping order are as follows:

[1] *See Finished Carbon Steel Flanges from Spain: Final Determination of Sales at Less Than Fair Value,* 82 FR 18108 (April 17, 2017) (*Final Determination*).

[2] *See* Letter from the ITC regarding finished carbon steel flanges from Spain, dated June 7, 2017 (ITC Letter). *See also Finished Carbon Steel Flanges from Spain Investigation No. 731–TA–1333 (Final)* USITC Publication 4696 (June 2017) (ITC Report).

[3] For a full description of the scope of this order, *see* the Appendix to this notice.

[4] *See* ITC Letter and ITC Report.

[5] *See Finished Carbon Steel Flanges from Spain: Preliminary Determination of Sales at Less Than Fair Value,* 82 FR 9723 (February 8, 2017) (*Preliminary Determination*).

[6] *See* section 736(a)(3) of the Act.

Exporter/manufacturer	Weighted-average dumping margins (percent)
ULMA Forja, S.Coop	24.43
All Others	18.81

Notifications to Interested Parties

This notice constitutes the antidumping duty order with respect to finished carbon steel flanges from Spain pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This order is published in accordance with section and 736(a) of the Act and 19 CFR 351.211(b).

Dated: June 9, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Order

The scope of this order covers finished carbon steel flanges. Finished carbon steel flanges differ from unfinished carbon steel flanges (also known as carbon steel flange forgings) in that they have undergone further processing after forging, including, but not limited to, beveling, bore threading, center or step boring, face machining, taper boring, machining ends or surfaces, drilling bolt holes, and/or de-burring or shot blasting. Any one of these post-forging processes suffices to render the forging into a finished carbon steel flange for purposes of this order. However, mere heat treatment of a carbon steel flange forging (without any other further processing after forging) does not render the forging into a finished carbon steel flange for purposes of this order.

While these finished carbon steel flanges are generally manufactured to specification ASME B16.5 or ASME B16.47 series A or series B, the scope is not limited to flanges produced under those specifications. All types of finished carbon steel flanges are included in the scope regardless of pipe size (which may or may not be expressed in inches of nominal pipe size), pressure class (usually, but not necessarily, expressed in pounds of pressure, *e.g.,* 150, 300, 400, 600, 900, 1500, 2500, *etc.*), type of face (*e.g.,* flat face, full face, raised face, *etc.*), configuration (*e.g.,* weld neck, slip on, socket weld, lap joint, threaded, *etc.*), wall thickness (usually, but not necessarily, expressed in inches), normalization, or whether or not heat treated. These carbon steel flanges either meet or exceed the requirements of the ASTM A105, ASTM A694, ASTM A181, ASTM A350 and ASTM A707 standards (or comparable foreign specifications). The scope includes any flanges produced to the above-referenced ASTM standards as currently stated or as may be amended. The term ''carbon steel'' under this scope is steel in which:

(a) Iron predominates, by weight, over each of the other contained elements:

(b) the carbon content is 2 percent or less, by weight; and

(c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 0.87 percent of aluminum;
(ii) 0.0105 percent of boron;
(iii) 10.10 percent of chromium;
(iv) 1.55 percent of columbium;
(v) 3.10 percent of copper;
(vi) 0.38 percent of lead;
(vii) 3.04 percent of manganese;
(viii) 2.05 percent of molybdenum;
(ix) 20.15 percent of nickel;
(x) 1.55 percent of niobium;
(xi) 0.20 percent of nitrogen;
(xii) 0.21 percent of phosphorus;
(xiii) 3.10 percent of silicon;
(xiv) 0.21 percent of sulfur;
(xv) 1.05 percent of titanium;
(xvi) 4.06 percent of tungsten;
(xvii) 0.53 percent of vanadium; or
(xviii) 0.015 percent of zirconium.

Finished carbon steel flanges are currently classified under subheadings 7307.91.5010 and 7307.91.5050 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also be entered under HTSUS subheadings 7307.91.5030 and 7307.91.5070. The HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope is dispositive.

[FR Doc. 2017–12404 Filed 6–13–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 21st Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) published the *Preliminary Results* of the 21st administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) on December 9, 2016. We gave interested parties an opportunity to comment on the *Preliminary Results.* The period of review (POR) is November 1, 2014, and October 31, 2015. The mandatory respondents in this review are: Zhengzhou Harmoni Spice Co., Ltd. (Harmoni) and Qingdao Tiantaixing Foods Co., Ltd. (QTF).

Based upon our analysis of the comments and information received, we made no changes to the margin calculated for voluntary respondent, Shenzhen Xinboda Industrial Co., Ltd. (Xinboda). As discussed below, the Department continues to find that QTF withheld requested information, significantly impeded the administrative review, and did not cooperate to the best of its ability. Accordingly, we continue to use adverse facts available. However, in a change from the *Preliminary Results,* we find that QTF is not eligible for separate rate status, and thus, is a part of the PRC-wide entity. The Department is also rescinding the review with respect to Harmoni and Jinxiang Jinma Fruits Vegetables Products Co., Ltd. (Jinxiang Jinma), as discussed below.

These determinations and the final dumping margins are discussed below in the ''Final Results'' section of this notice.

DATES: Effective June 14, 2017.

FOR FURTHER INFORMATION CONTACT: Kathryn Wallace or Alexander Cipolla, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone 202–482–6251 or 202–482–4956, respectively.

SUPPLEMENTARY INFORMATION: The Department published the *Preliminary Results* on December 9, 2016, in which it preliminarily determined that QTF and Harmoni each failed to cooperate to the best of its ability. As a result, the Department preliminarily found that Harmoni had not rebutted the presumption that it is part of the PRC-wide entity, and we preliminarily based QTF's dumping margin on adverse facts available. The Department also preliminarily found that Xinboda sold merchandise to the United States at less than normal value. Finally, we preliminarily granted a separate rate to five companies which demonstrated their eligibility for separate rate status, but were not selected for individual examination.[1] In accordance with 19 CFR 351.309, we invited parties to comment on our *Preliminary Results.* The petitioners,[2] the New Mexico Garlic Growers Coalition (NMGGC),[3] Xinboda, QTF, Harmoni, and Jinxiang Hejia Co., Ltd. (Hejia) timely filed case briefs, pursuant to our regulations.[4]

[1] *See Fresh Garlic from the People's Republic of China: Preliminary Results and Partial Rescission of the 21st Antidumping Duty Administrative Review; 2014–2015,* 81 FR 89050 (December 9, 2016) (*Preliminary Results*) and accompanying Issues and Decision Memorandum (PDM).

[2] The petitioners are the Fresh Garlic Producers Association (FGPA) and its individual members: Christopher Ranch LLC, The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

[3] The NMGGC, at the time of initiation, consisted of Avrum Katz of Boxcar Farm and Stanley Crawford of El Bosque Farm.

[4] *See* NMGGC's Case Brief, ''Case Brief Filed on Behalf of the New Mexico Garlic Growers Coalition

Additionally, the petitioners, the NMGGC, Xinboda, and Harmoni timely filed rebuttal briefs.[5] The deadline for the final results of this review was April 10, 2017. On March 15, 2017, the Department extended the deadline in this proceeding by 60 days to June 7, 2017.[6]

Scope of the Order

The merchandise covered by the order includes all grades of garlic, whole or separated into constituent cloves. Fresh garlic that are subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) 0703.20.0000, 0703.20.0005, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, 2005.99.9700. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive. For a full description of the scope of this order, please see ''Scope of the Order'' in the accompanying Issues and Decision Memorandum.[7]

Partial Rescission of Administrative Review

As discussed in the IDM,[8] the Department is rescinding the review with respect to Harmoni and Jinxiang Jinma based on the Department's determination that the NMGGC's request for review was not credible.

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs by parties in this review in the IDM. Appendix I provides a list of the issues which parties raised. The IDM is a public document and is on file in the Central Records Unit (CRU), Room B8024 of the main Department of Commerce building, as well as electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the CRU. In addition, a complete version of the IDM can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed IDM and the electronic versions of the IDM are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* and for the reasons explained in the IDM, including the application of facts available with an adverse inference, we revised our decision regarding QTF's eligibility for a separate rate, and further collapsed the QTF-entity to include Hebei Golden Bird Trading Co., Ltd. and Huamei Consulting.[9] For the final results of this review, the Department has also updated the list of companies subject to this review that are found to be part of the PRC-wide entity. For a list of all issues addressed in these final results, please refer to Appendix I accompanying this notice.

Final Determination of No Shipments

In the *Preliminary Results,* the Department preliminarily determined that the companies listed in Appendix III timely filed ''no shipment'' certifications and did not have any reviewable transactions during the POR. Consistent with the Department's assessment practice in non-market economy (NME) cases, we completed the review with respect to the companies listed in Appendix III. For the companies listed in Appendix III, CBP provided no evidence to contradict the claims of these companies of no shipments. Based on this information, we continue to determine that the companies listed in Appendix III did not have any reviewable transactions during the POR. *See* Appendix III.

As discussed in the IDM, in the *Preliminary Results,* CBP indicated that although Shenzhen Yuting Foodstuff Co., Ltd. (Yuting) had certified no shipments, in fact, it had shipments during the POR.[10] Following the *Preliminary Results,* Yuting sufficiently clarified the discrepancy with the Department.[11] As noted in the ''Assessment Rates'' section below, the Department intends to issue appropriate instructions to CBP for the companies listed below based on the final results of this review.

PRC-Wide Entity

As discussed in the *Preliminary Results,* the Department's policy regarding conditional review of the PRC-wide entity applies to this administrative review.[12] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity, the entity is not under review and the entity's rate (*i.e.,* $4.71/kg) is not subject to change. Aside from the no shipment companies discussed above, the Department considers all other companies for which a review was requested, and which did not qualify for a separate rate, to be part of the PRC-wide entity. *See* Appendix II.

and El Bosque Farm in the 21st Administrative Review of Fresh Garlic from the People's Republic of China'' (March 24, 2017); *see also* Xinboda's First Case Brief, ''Fresh Garlic from the People's Republic of China—Case Brief'' (March 24, 2017); *see also* QTF's Case Brief, ''Case Brief of Qingdao Tiantaixing Foods Co., Ltd.,'' (March 24, 2017); *see also* Petitioners' First Case Brief, ''Fresh Garlic from the People's Republic of China—Petitioners' Case Brief,'' (March 24, 2017); *see also* Harmoni's Case Brief, ''Harmoni Administrative Case Brief: 21st Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A–570–831),'' (March 24, 2017); *see also* Xinboda's Second Case Brief, ''Case Brief of Shenzhen Xinboda Industrial Co. Ltd. (''Xinboda'') Re: Data Issues'' (April 11, 2017); *see also* Hejia's Case Brief, ''Case Brief Jinxiang Hejia Co., Ltd.'' (April 11, 2017); *see also* Petitioners' Second Case Brief, ''Petitioners' Case Brief Concerning Shenzhen Xinboda Industrial Co., Ltd'' (April 11, 2017).

[5] *See* NMGGC's Rebuttal Brief, ''Rebuttal Brief—Filed on Behalf of the New Mexico Garlic Growers Coalition and El Bosque Farm in the 21st Administrative Review of Fresh Garlic from the People's Republic of China,'' (March 31, 2017); *see also* Xinboda's First Rebuttal Brief, ''Fresh Garlic from the People's Republic of China—Letter Rebuttal Brief'' (March 31, 2017); *see also* Petitioners' First Rebuttal Brief, ''Petitioners' Rebuttal Brief'' (March 31, 2017); *see also* Harmoni's Rebuttal Brief, ''Harmoni's Rebuttal Brief: 21st Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A–570–831)'' (March 31, 2017); *see also* Xinboda Second Rebuttal Brief), ''Rebuttal Brief of Shenzhen Xinboda Industrial Co., Ltd. (''Xinboda'') Re: Data Issues'' (April 18, 2017); *see also* Petitioners' Second Rebuttal Brief, ''Petitioners' Second Case Rebuttal Brief'' (April 18, 2017).

[6] *See* Memorandum, ''Fresh Garlic from the People's Republic of China—21st Administrative Review (2014–2015): Extension of Deadline for the Final Results of the Review'' (March 15, 2017).

[7] *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Fresh Garlic from the People's Republic of China; 2014–2015,'' dated concurrently with this notice (IDM).

[8] *See* IDM at Comment 1.

[9] As discussed in the IDM, the QTF-entity includes Qingdao Tiantaixing Foods Co., Ltd. (QTF); Qingdao Tianhefeng Foods Co., Ltd. (QTHF); Qingdao Beixing Trading Co., Ltd. (QBT); Qingdao Lianghe International Trade Co., Ltd. (Lianghe); and Qingdao Xintianfeng Foods Co., Ltd. (QXF); Hebei Golden Bird Trading Co., Ltd. (Golden Bird); Huamei Consulting (collectively, the QTF-entity).

[10] *See* IDM at ''Final Determination of No Shipments.''

[11] As noted in the IDM, in the preliminary results, the Department considered Yuting to be a part of the PRC-wide entity because CBP data indicated that it did have a shipment during the POR. However, based on Yuting's clarification, the Department finds that Yuting is no longer considered to be a part of the PRC-wide entity, and accordingly, we intend to liquidate the entry at the rate established in the prior administrative review.

[12] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

Separate Rates

In the *Preliminary Results,* the Department found that non-selected companies Jinan Farmlady Trading Co., Ltd., Jining Alpha Food Co., Ltd., Shandong Jinxiang Zhengyang Import & Export Co., Ltd., Shenzhen Bainong Co., Ltd., and Weifang Hongqiao International Logistics Co., Ltd., demonstrated their eligibility for a separate rate.[13] We continue to find that those five companies are eligible for a separate rate. As discussed in the IDM, the Department granted QTF separate status in the Preliminary Results. However, we now find that the QTF-entity did not rebut the presumption of government control.[14] As such, it did not demonstrate its eligibility for a separate rate. QTF has commented on our preliminary decision, and we have addressed its comments in the IDM.

In the *Preliminary Results,* we assigned the non-selected separate rate companies the dumping margin calculated for Xinboda. No parties commented on this. We continue to use Xinboda's margin as the margin for the non-selected separate rate companies in these final results.

Final Results of Administrative Review

The weighted-average dumping margins for the administrative review are as follows:

Exporter	Weighted-average margins (dollars per kilogram)
Shenzhen Xinboda Industrial Co., Ltd	$2.27
Jinan Farmlady Trading Co., Ltd	2.27
Jining Alpha Food Co., Ltd	2.27
Shandong Jinxiang Zhengyang Import & Export Co., Ltd	2.27
Shenzhen Bainong Co., Ltd.	2.27
Weifang Hongqiao International Logistics Co., Ltd	2.27
PRC-Wide Rate	4.71

Assessment Rates

Pursuant to section 751(a)(2)(A) and (C) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.212(b), the Department has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review.

Where the respondent reported reliable entered values, we calculated importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[15] Where the Department calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, the Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit rates.[16] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis,* the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[17] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[18] We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate.

Pursuant to the Department's assessment practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide entity rate. Additionally, if the Department determines that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide entity rate.[19]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporter listed above, the cash deposit rate will be the rate established in the final results of review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of $4.71 per kilogram; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. The deposit requirements shall remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

[13] *See Preliminary Results* at Appendix II.

[14] *See* IDM at 6 and Comment 4.

[15] *See* 19 CFR 351.212(b)(1).

[16] *Id.*

[17] *Id.*

[18] *See* 19 CFR 351.106(c)(2).

[19] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Dated: June 7, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I—Issues and Decision Memorandum

1. Whether the Department Should Rescind the Review of Harmoni and Jinxiang Jinma
2. Whether Hejia is Eligible for a Separate Rate
3. Yuting's No Shipment Status
4. Whether the Application of AFA to QTF-Entity was Warranted, and Whether the QTF-Entity is Eligible for a Separate Rate
5. The Department's Application of the $4.71 per kilogram AFA Rate
6. Whether the Department Properly Calculated Xinboda's EP
7. Whether the Department Should Rely on Total AFA in Assigning a Dumping Margin to Xinboda
8. Whether the Department Correctly Selected Romania as the Surrogate Country and Whether Mexico has the Highest Quality of Data Available

Appendix II—List of Companies Under Review Subject to the PRC-Wide Rate

1. Jining Yongjia Trade Co., Ltd.
2. Jinxiang Hejia Co., Ltd.
3. The QTF-entity
4. Shandong Zhifeng Foodstuffs Co., Ltd.
5. Zhong Lian Farming Product (Qingdao) Co., Ltd.

Appendix III—Companies That Have Certified No Shipments

1. Jining Yifa Garlic Produce Co., Ltd.
2. Jining Shengtai Fruits & Vegetables Co., Ltd.
3. Jining Shunchang Import & Export Co., Ltd.
4. Jinxiang Guihua Food Co., Ltd.
5. Jinxiang Richfar Fruits & Vegetables Co., Ltd.
6. Qingdao Maycarrier Import & Export Co., Ltd.
7. Qingdao Sea-Line International Trading Co., Ltd.
8. Shandong Chenhe International Trading Co., Ltd.
9. Shijiazhuang Goodman Trading Co., Ltd.
10. Yantai Jinyan Trading, Inc.

[FR Doc. 2017–12302 Filed 6–13–17; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–844]

Steel Concrete Reinforcing Bar From Mexico: Final Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 9, 2016, the Department of Commerce (the Department) published the *Preliminary Results* of the administrative review of the antidumping duty order on steel concrete reinforcing bar from Mexico (rebar). The period of review (POR) is April 24, 2014, through October 31, 2015. The review covers two mandatory respondents, Deacero S.A.P.I. de C.V. (Deacero) and Grupo Simec S.A.B. de C.V. (Grupo Simec). For these final results, we find that Deacero made sales of subject merchandise at less than normal value, while Grupo Simec did not make sales of subject merchandise at less than normal value. *See* the ''Final Results of the Review'' section below.

DATES: Effective June 14, 2017.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore (for Deacero) or Patricia Tran (for Grupo Simec), AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3692 or (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 2016, the Department published the *Preliminary Results*.[1] On January 31, 2017, the petitioner,[2] Grupo Simec, and Deacero timely submitted their case briefs.[3] On January 9, 2017, the petitioner and Grupo Simec submitted requests for a hearing.[4] On February 7, 2017, the petitioner, Grupo Simec, and Deacero submitted their rebuttal briefs.[5] On February 8, 2017, Grupo Simec withdrew its request for a hearing.[6] Both Grupo Simec and the petitioner agreed to meetings with the Department in lieu of a hearing. Department officials met with Grupo Simec and the petitioner on May 3, and 10, 2017, respectively.[7] On May 4, 2017, the Department postponed the final results until June 7, 2017.[8]

Scope of the Order

Imports covered by the order are shipments of steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The merchandise subject to review is currently classifiable under items 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other Harmonized Tariff Schedule of the United States (HTSUS) numbers including 7215.90.1000, 7215.90.5000, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.[9]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on-file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).

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[1] *See Steel Concrete Reinforcing Bar from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015,* 81 FR 89053 (December 9, 2016) (*Preliminary Results*).

[2] The petitioner is the Rebar Trade Action Coalition, whose individual members are Nucor Corporation, Gerdau Ameristeel US Inc., Commercial Metals Company, Cascade Steel Rolling Mills, Inc., and Byer Steel Corporation.

[3] *See* the petitioner's letter titled, ''Steel Concrete Reinforcing Bar from Mexico—Case Brief,'' dated January 31, 2017; *see also* Deacero's letter titled, ''Steel Concrete Reinforcing Bar from Mexico—Case Brief,'' dated January 31, 2017; Grupo Simec's letter titled, ''Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from Mexico—Case Brief,'' dated January 31, 2017.

[4] *See* letter from the petitioner titled, ''*Steel Concrete Reinforcing Bar from Mexico:* Request for Hearing,'' dated January 9, 2017. *See also* letter from Grupo Simec titled, ''Steel Concrete Reinforcing Bar from Mexico: Hearing Request,'' dated January 9, 2017.

[5] *See* the petitioner's letter titled, ''Steel Concrete Reinforcing Bar from Mexico—Rebuttal Brief,'' dated February 7, 2017; *see also* Deacero's letter titled, ''Steel Concrete Reinforcing Bar from Mexico—Rebuttal Brief,'' dated February 7, 2017; Grupo Simec's letter titled, ''Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from Mexico—Rebuttal Case Brief,'' dated February 7, 2017.

[6] *See* letter from Grupo Simec titled ''Steel Concrete Reinforcing Bar from Mexico: Withdrawal of Hearing Request,'' dated February 8, 2017.

[7] *See* Memorandum to the File from Stephanie Moore, Case Analyst titled, ''Steel Concrete Reinforcing Bar from Mexico: Meeting with Respondents,'' dated May 10, 2017. *See also* Memorandum to the File from Stephanie Moore, Case Analyst titled, ''Steel Concrete Reinforcing Bar from Mexico: Meeting with Petitioner,'' dated May 16, 2017.

[8] *See* Memorandum titled ''Steel Concrete Reinforcing Bar from Mexico: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated May 4, 2017.

[9] For a full description of the scope of the order, *see* the ''Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bar from Mexico; 2014–2015,'' dated concurrently with this notice (Issues and Decision Memorandum).

ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit (CRU), room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we have made company-specific changes to Deacero's final margin calculation with respect to the SAS Comparison Market for affiliated purchases of electricity, and we revised the general and administrative (G&A) expense ratio. However, despite these changes, the weighted-average dumping margin for Deacero has not changed.

For Grupo Simec, we have changed the final margin calculation with respect to the SAS Comparison Market for fixed overhead costs, G&A, and financial expense ratio. However, despite these changes, the weighted-average dumping margin for Grupo Simec has not changed.

Final Results of the Review

As a result of this review, we determine the following weighted-average dumping margins for the period April 24, 2014, through October 31, 2015:

Producer and/or exporter	Weighted-average dumping margins (percent)
Deacero S.A.P.I. de C.V	0.56
Grupo Simec S.A.B. de C.V[10]	0.00

Disclosure

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Duty Assessment

The Department shall determine and Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries.[11] For Deacero, because its weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent), the Department has calculated importer-specific antidumping duty assessment rates. We calculated importer-specific *ad valorem* antidumping duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing each of these amounts by the total entered value associated with those sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review where an importer-specific assessment rate is not zero or *de minimis.* Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is zero or *de minimis.* Because we calculated a zero margin for Grupo Simec in the final results of this review, we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[12]

We intend to issue assessment instructions directly to CBP 41 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for respondents noted above will be the rate established in the final results of this administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(I), in which case the cash deposit rate will be zero; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 20.58 percent, the all-others rate established in the antidumping investigation.[13] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h) and 19 CFR 351.221(b)(5).

[10] Pursuant to section 771(33)(B), (F) and (G) of the Tariff Act of 1930, as amended (the Act), the Department found Grupo Simec S.A.B. de C.V. affiliated with the following producers: Orge S.A. de C.V.; Compania Siderurgica del Pacifico S.A. de C.V.; Grupo Chant S.A.P.I. de C.V.; RRLC S.A.P.I. de C.V.; Siderurgica del Occidente y Pacifico S.A. de C.V.; Simec International 6 S.A. de C.V.; Simec International 7 S.A. de C.V.; and Simec International 9 S.A. de C.V. The Department collapsed and treated as a single entity Grupo Simec S.A.B. de C.V. and these producers for purposes of this administrative review pursuant to 19 CFR 351.401(f). The collective entity is Grupo Simec.

[11] In these final results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[12] *See Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[13] *See Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 79 FR 54967 (September 15, 2014).

Dated: June 7, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final Decision Memorandum

[FR Doc. 2017–12304 Filed 6–13–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

District Export Council Nomination Opportunity

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity for appointment to serve as a District Export Council member.

SUMMARY: The Department of Commerce is currently seeking nominations of individuals for consideration for appointment by the Secretary of Commerce to serve as members of one of the 60 District Export Councils (DECs) nationwide. DECs are closely affiliated with the U.S. Export Assistance Centers (USEACs) of the U.S. and Foreign Commercial Service (US&FCS), and play a key role in the planning and coordination of export activities in their communities.

DATES: Nominations for individuals to a DEC must be received by the local USEAC Director by 5:00 p.m. local time on July 28, 2017.

FOR FURTHER INFORMATION CONTACT: Please contact the Director of your local USEAC for more information on DECs and the nomination process. You may identify your local USEAC by entering your zip code online at *http://export.gov/usoffices/index.asp.* For general program information, contact Laura Barmby, National DEC Liaison, US&FCS, at (202) 482–2675.

SUPPLEMENTARY INFORMATION: District Export Councils support the mission of US&FCS by facilitating the development of an effective local export assistance network, supporting the expansion of export opportunities for local U.S. companies, serving as a communication link between the business community and US&FCS, and assisting in coordinating the activities of trade assistance partners to leverage available resources. Individuals appointed to a DEC become part of a select corps of trade experts dedicated to providing international trade leadership and guidance to the local business community and assistance to the Department of Commerce on export development issues.

Nomination Process: Each DEC has a maximum membership of 35. Approximately half of the positions are open on each DEC for the four-year term that begins on January 1, 2018, and runs through December 31, 2021. All potential nominees must complete an online nomination form and consent to sharing of the information on that form with the DEC Executive Committee for its consideration, and consent, if appointed, to sharing of their contact information with other partners.

Eligibility and Appointment Criteria: Appointment is based upon an individual's international trade leadership in the local community, ability to influence the local environment for exporting, knowledge of day-to-day international operations, interest in export development, and willingness and ability to devote time to DEC activities. Members must be employed as exporters or export service providers or in a profession which supports U.S. export promotion efforts. Members include exporters, export service providers and others whose profession supports U.S. export promotion efforts. DEC member appointments are made without regard to political affiliation. DEC membership is open to U.S. citizens and permanent residents of the United States. As representatives of the local exporting community, DEC Members must reside in, or conduct the majority of their work in, the territory that the DEC covers. DEC membership is not open to federal government employees, or individuals representing foreign governments, including individuals registered with the Department of Justice under the Foreign Agents Registration Act.

Selection Process: Nominations of individuals who have applied for DEC membership will be forwarded to the local USEAC Director for the respective DEC for that Director's consideration. The local USEAC Director ensures that all nominees meet the membership criteria outlined below. The local USEAC Director then, in consultation with the local DEC Executive Committee, evaluates all nominations to determine their interest, commitment, and qualifications. In reviewing nominations, the local USEAC Director strives to ensure a balance among exporters from a manufacturing or service industry and export service providers. A fair representation should be considered from companies and organizations that support exporters, representatives of local and state government, and trade organizations and associations. Membership should reflect the diversity of the local business community, encompass a broad range of businesses and industry sectors, and be distributed geographically across the DEC service area.

For current DEC members seeking reappointment, the local USEAC Director, in consultation with the DEC Executive Committee, also carefully considers the nominee's activity level during the previous term and demonstrated ability to work cooperatively and effectively with other DEC members and US&FCS staff. As appointees of the Secretary of Commerce in high-profile positions, though volunteers, DEC Members are expected to actively participate in the DEC and support the work of local US&FCS offices. Those that do not support the work of the office or do not actively participate in DEC activities will not be considered for re-nomination.

The Executive Secretary determines which nominees to forward to the US&FCS Office of U.S. Operations for further consideration for recommendation to the Secretary of Commerce in consultation with the local DEC Executive Committee. A candidate's background and character are pertinent to determining suitability and eligibility for DEC membership. Since DEC appointments are made by

the Secretary, the Department must make a suitability determination for all DEC nominees. After completion of a vetting process, the Secretary selects nominees for appointment to local DECs. DEC members are appointed by and serve at the pleasure of the Secretary of Commerce.

Authority: 15 U.S.C. 1512, 15 U.S.C. 4721.

Dated: June 6, 2017.

Laura Barmby,

District Export Council Program Manager.

[FR Doc. 2017–12250 Filed 6–13–17; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF475

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application from the Coonamessett Farm Foundation to conduct a scallop survey contains all of the required information and warrants further consideration.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notice intended to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before June 29, 2017.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''CFF NGOM Survey EFP.''
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on CFF NGOM Survey EFP.''

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fisheries Management Specialist, 978–282–8456.

SUPPLEMENTARY INFORMATION: The Coonamessett Farm Foundation submitted a complete application on May 23, 2017, to conduct an optical and dredge survey in the Northern Gulf of Maine (NGOM) Scallop Management Area. The project titled ''An Optical Assessment of Sea Scallop Abundance and Distribution in Select Areas of the Northern Gulf of Maine Scallop Management Area'' would be funded through the Scallop Research Set-Aside Program. The primary survey instrument would be the HabCam imaging system, consisting of a camera that continuously takes photos and a side scanning sonar, that would be towed approximately 2.5 meters above the ocean floor. A scallop survey dredge would also be deployed to enable collection of biological information. The vessel would be exempt from the Atlantic sea scallop days-at-sea (DAS) allocations at 50 CFR 648.53(b); NGOM management program requirements at § 648.62; crew size restrictions at § 648.51(c); dredge gear restrictions at § 648.51(b); and observer program requirements at § 648.11(g). The vessel would also be temporarily exempt from possession limits and minimum size requirements specified in 50 CFR part 648, subparts B and D through O, for biological sampling purposes only. These exemptions would support an abundance survey of the NGOM Scallop Management Area.

The primary survey instrument will be the HabCam imaging system, but a scallop survey dredge would be deployed to enable collection of biological information. One vessel would conduct the survey in early July 2017 over the course of four days-at-sea. Researchers would conduct 3 dredge tows per day for a maximum of 12 tows using the NMFS survey dredge. The survey dredge is 8 feet (2.4 m) in width equipped with 2-inch (5.1-cm) rings, 4-inch (10.2-cm) diamond twine top, and a 1.5-inch (3.8-cm) diamond mesh liner. All tows would be conducted at speeds between 4.8 to 5.1 knots (2.5 to 2.6 m/s) for 10–15 minutes. The dredge tow locations would be determined during the optical survey using the HabCam system based on scallop abundance. This survey would provide scallop biomass estimates that would support scallop resource management in the NGOM Management Area. The survey will occur in parts of Stellwagen Bank and Jeffrey's Ledge that are open to commercial scallop fishing. No dredge tows will occur in a habitat closed area.

In addition to collecting Habcam image data, scientific personnel will record detailed catch information on scallops, finfish, and invertebrates from dredge tows. No fish or scallops will be retained for commercial purposes, but frozen samples of scallop meats may be retained. All bycatch would be returned to the sea as soon as practicable following data collection. These exemptions will allow CFF to conduct experimental dredge towing without being charged DAS, as well as deploy gear that is not consistent with current scallop regulations. Participating vessels need crew size waivers to accommodate science personnel. Exemption from possession limit and minimum sizes would ensure the vessel is not in conflict with possession regulations while collecting catch data. The project would also be exempt from the sea scallop observer program requirements because activities conducted on the trip are not consistent with normal fishing operations.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 9, 2017.

Margo B. Schulze-Haugen,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–12317 Filed 6–13–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF476

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 51 pre-assessment webinar for Gulf of Mexico gray snapper.

SUMMARY: The SEDAR 51 assessment process of Gulf of Mexico gray snapper will consist of a Data Workshop, a series of assessment webinars, and a Review Workshop.

DATES: The SEDAR 51 pre-assessment webinar will be held June 27, 2017, from 1 p.m. to 3 p.m. Eastern Time.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the post-Data Workshop webinar are as follows:

1. Panelists will present finalized data for review and recommendation.

2. Panelists will begin discussing the modeling framework and initial model recommendations

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 8, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–12256 Filed 6–13–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF477

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Atlantic Bluefish Advisory Panel will hold a public meeting, jointly with the Atlantic States Marine Fisheries Commission (ASMFC) Atlantic Bluefish Advisory Panel.

DATES: The meeting will be held on Tuesday, June 27, 2017, from 9 a.m. to 12 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES:

Meeting address: The meeting will be held via webinar with a telephone-only connection option. Details on the proposed agenda, webinar listen-in access, and briefing materials will be posted at the MAFMC's Web site: *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their Web site at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Advisory Panels to create a fishery performance report (FPR). The intent of this report is to facilitate a venue for structured input from the Advisory Panels for the Atlantic Bluefish specifications process. The FPR will be used by the MAFMC's Scientific and Statistical Committee (SSC) and the Atlantic Bluefish Monitoring Committee (MC), when reviewing (at future meetings in July), and if necessary revising, the current measures designed to achieve the recommended Atlantic Bluefish catch and landings limits for 2018. In addition, the MAFMC and ASMFC will consider input from the Advisory Panels in August when reviewing these specifications.

Although other non-emergency issues not on the agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: June 8, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–12255 Filed 6–13–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF478

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council's) Summer Flounder, Scup, and Black Sea Bass Advisory Panel (AP) will hold a public meeting, jointly with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Advisory Panel.

DATES: The meeting will be held on Wednesday, June 28, 2017, from 10 a.m. until 4:30 p.m.

ADDRESSES:

Meeting address: The meeting will be held at the Double Tree by Hilton Baltimore –BWI Airport, 890 Elkridge Landing Road, Linthicum, MD 21090; telephone: (410) 859–8400.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Council's Summer Flounder, Scup, and Black Sea Bass AP will meet jointly with the ASMFC's Summer Flounder, Scup, and Black Sea Bass AP. The purpose of this meeting is to discuss recent performance of the commercial and recreational fisheries for summer flounder, scup, and black sea bass, and develop annual Fishery Performance Reports for these fisheries. The Council and the ASMFC will consider the Fishery Performance Reports later in 2017 when reviewing previously implemented 2018 fishery specifications (*i.e.,* catch and landings limits and management measures) for all three species, and possibly recommending 2019 specifications for scup. The AP will also discuss commercial summer flounder management alternatives under development for the Council and ASMFC's ongoing Comprehensive Summer Flounder Amendment.

Although other non-emergency issues not on the agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: June 8, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–12254 Filed 6–13–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF320

Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Donation Program

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

ACTION: Notice; selection of an authorized distributor.

SUMMARY: NMFS announces the renewal of two prohibited species donation (PSD) permits to SeaShare, authorizing this organization to distribute Pacific salmon and Pacific halibut to economically disadvantaged individuals under the PSD program. Salmon and halibut are caught incidentally during directed fishing for groundfish with trawl gear off Alaska. This action is necessary to comply with provisions of the PSD program and is intended to promote the goals and objectives of the North Pacific Fishery Management Council.

DATES: The permits are effective from June 14, 2017 through June 15, 2020.

ADDRESSES: Electronic copies of the PSD permits for salmon and halibut prepared for this action may be obtained from the Alaska Region Web site at *http://www.alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Megan Mackey, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) is managed by NMFS in accordance with the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). These fishery management plans (FMPs) were prepared by the North Pacific Fishery Management Council under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* Regulations governing the Alaska groundfish fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679. Fishing for halibut in waters in and off Alaska is governed by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention). The International Pacific Halibut Commission (IPHC) promulgates regulations pursuant to the Convention. The IPHC's regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce. After approval by the Secretary of State and the Secretary of Commerce, the IPHC regulations are published in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62.

Retention of incidentally caught prohibited species is prohibited in the groundfish fisheries except for salmon and halibut for the purposes of the PSD program. Amendments 26 and 29 to the BSAI and GOA FMPs, respectively, authorize a salmon donation program and were approved by NMFS on July 10, 1996; a final rule implementing this program was published in the **Federal Register** on July 24, 1996 (61 FR 38358). The salmon donation program was expanded to include halibut as part of the PSD program under Amendments 50 and 50 to the FMPs that were approved by NMFS on May 6, 1998. A final rule implementing Amendments 50 and 50 was published in the **Federal Register** on June 12, 1998 (63 FR 32144). Although that final rule contained a sunset provision for the halibut PSD program of December 31, 2000, the halibut PSD program was permanently extended under a final rule published in the **Federal Register** on December 14,

2000 (65 FR 78119). A full description of, and background information on, the PSD program may be found in the preambles to the proposed rules for Amendments 26 and 29, and Amendments 50 and 50 (61 FR 24750, May 16, 1996, and 63 FR 10583, March 4, 1998, respectively).

Section 679.26 authorizes the voluntary distribution of salmon and halibut taken incidentally in the groundfish trawl fisheries off Alaska to economically disadvantaged individuals by tax-exempt organizations through an authorized distributor. The Administrator, Alaska Region, NMFS (Regional Administrator), may select one or more tax-exempt organizations to be authorized distributors, as defined by § 679.2, based on the information submitted by applicants under § 679.26. After review of qualified applicants, NMFS must announce the selection of each authorized distributor in the **Federal Register** and issue one or more PSD permits to each selected distributor.

Renewal of Permits to SeaShare

Currently, SeaShare, a tax-exempt organization founded to help the seafood industry donate to U.S. hunger relief efforts, is the sole authorized distributor of salmon and halibut taken incidentally in the groundfish trawl fisheries off Alaska. SeaShare's current salmon and halibut PSD permits became effective June 11, 2014, and authorize SeaShare to participate in the PSD program through June 12, 2017 (79 FR 33526, June 11, 2014).

On April 17, 2017, the Regional Administrator received an application from SeaShare to renew its salmon and halibut PSD permits. The Regional Administrator reviewed the application and determined that it is complete and that SeaShare continues to meet the requirements for an authorized distributor under the PSD program. As required by § 679.26(b)(2), the Regional Administrator based his selection on the following criteria:

1. *The number and qualifications of applicants for PSD permits.* SeaShare is the only applicant for PSD permits at this time. NMFS has previously approved applications submitted by SeaShare. As of the date of this notice, no other applications have been approved by NMFS. SeaShare has been coordinating the distribution of salmon taken incidentally in trawl fisheries since 1993, and of halibut taken incidentally in trawl fisheries since 1998, under exempted fishing permits from 1993 to 1996 and under the PSD program since 1996. SeaShare employs independent seafood quality control experts to ensure product quality is maintained by cold storage facilities and common carriers servicing the areas where salmon and halibut donations would take place.

2. *The number of harvesters and the quantity of fish that applicants can effectively administer.* Current participants in the salmon donation program administered by SeaShare include 13 shoreside processors and 138 catcher vessels delivering to shoreside processors; 35 catcher/processors; and 3 motherships and 15 catcher vessels delivering to motherships, with all 15 vessels delivering to both shoreside and motherships. Thirteen shoreside processors and 138 catcher vessels participate in the halibut donation program administered by SeaShare. Two reprocessing plants that generate steaked salmon and halibut participate in the PSD program. SeaShare has the capacity to receive and distribute salmon and halibut from up to 60 processors and the associated catcher vessels. Therefore, it is anticipated that SeaShare has more than adequate capacity for any foreseeable expansion of donations.

In 2011, participation in the PSD program expanded beyond the BSAI to include GOA processors and vessels. Table 1 shows the total pounds of headed-and-gutted and steaked salmon and halibut donated to food bank organizations from 2014 through 2016. NMFS does not have information to convert accurately the net weights of salmon and halibut to numbers of salmon and numbers of halibut.

TABLE 1—HEADED-AND-GUTTED (H&G) AND STEAKED SALMON AND HALIBUT DONATED TO FOOD BANK ORGANIZATIONS

[pounds]

	2014	2015	2016	Total
Salmon H&G	0	0	536	536
Salmon steaked	398,587	449,865	436,700	1,285,152
Halibut H&G	13,050	26,605	13,144	52,799
Halibut steaked	45,988	21,680	37,240	104,908
Total Inventory	457,625	498,150	487,620	1,443,395

3. *The anticipated level of salmon and halibut incidental catch based on salmon and halibut incidental catch from previous years.* The incidental catch of salmon and incidental catch mortality of halibut in the GOA and BSAI trawl fisheries are shown in Table 2.

TABLE 2—INCIDENTAL CATCH OF SALMON AND INCIDENTAL CATCH MORTALITY OF HALIBUT IN THE GOA AND BSAI TRAWL FISHERIES

[in number of fish or metric tons]

Area fishery	2014	2015	2016
BSAI Trawl Chinook Salmon Incidental Catch [1]	18,096 fish	25,253 fish	32,560 fish.
BSAI Trawl Other Salmon Incidental Catch [2]	223,853 fish	243,343 fish	347,138 fish.
GOA Trawl Chinook Salmon Incidental Catch	15,702 fish [3]	18,946 fish [4]	21,896 fish. [5]
GOA Trawl Other Salmon Incidental Catch	2,319 fish [6]	1,319 fish [7]	2,775 fish. [8]
BSAI Trawl Halibut Mortality	2,824 mt [9]	1,889 mt [10]	1,982 mt. [11]
GOA Trawl Halibut Mortality	1,392 mt [12]	1,413 mt [13]	1,336 mt. [14]

mt = metric tons

Halibut incidental catch amounts are constrained by an annual prohibited species catch (PSC) limit in the BSAI and GOA. Future halibut incidental catch levels likely will be similar to those experienced from 2014 through 2016 with some reductions possible relative to 2014 and 2015 incidental catch levels. Amendment 111 to the BSAI FMP reduced BSAI halibut PSC limits in 2016 and incidental catch decreased beginning that year (81 FR 24714, April 27, 2016).

Chinook salmon PSC limits are established for the Bering Sea and central and western GOA pollock fisheries that, when attained, result in the closure of pollock fishing. The Chinook salmon PSC limits for the Bering Sea pollock fisheries were originally established by Amendment 91 to the BSAI FMP (75 FR 53026, August 30, 2010) and established for the central and western GOA pollock fisheries by Amendment 93 to the GOA FMP (77 FR 42629, July 20, 2012). In 2016, Amendment 110 to the BSAI FMP was implemented to improve the management of Chinook and chum salmon bycatch in the Bering Sea pollock fishery by creating a comprehensive salmon bycatch avoidance program (81 FR 37534, June 10, 2016). In 2015, Amendment 97 to the GOA FMP established annual Chinook salmon PSC limits for the groundfish trawl fisheries, except for pollock trawl fisheries, in the Western and Central GOA (79 FR 71350, December 2, 2014). While salmon incidental catch amounts tend to vary between years, making it difficult to accurately predict future incidental take amounts, the total, or maximum, amount of annual Chinook salmon incidental catch in the Bering Sea and GOA pollock fisheries is constrained by the PSC limits.

4. *The number of vessels and processors participating in the PSD program.* For the 2017 permit renewal, shoreside processors will decrease slightly from 15 to 13, and vessels delivering to shoreside processors will increase slightly from 137 to 138. Catcher/processors participating in the PSD program for salmon will decrease slightly from 36 to 35 under the 2017 permit renewal. Catcher vessels delivering to motherships will remain at 15 vessels.

NMFS issues PSD permits to SeaShare for a 3-year period unless the permits are suspended or revoked under § 679.26. The permits may not be transferred; however, they may be renewed following the application procedures in § 679.26.

If the authorized distributor modifies the list of participants in the PSD program or delivery locations, the authorized distributor must submit a modified list of participants or a modified list of delivery locations to the Regional Administrator.

These permits may be suspended, modified, or revoked under 15 CFR part 904 for violation of § 679.26 or other regulations in 50 CFR part 679.

Classification

This action is taken under § 679.26.

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

Dated: June 9, 2017.

Margo B. Schulze-Haugen,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–12313 Filed 6–13–17; 8:45 am]

BILLING CODE 3510–22–P

[1] *https://alaskafisheries.noaa.gov/sites/default/files/reports/chinook_salmon_mortality2017.pdf* accessed on 04/17/17.

[2] *https://alaskafisheries.noaa.gov/sites/default/files/reports/chum_salmon_mortality2017.pdf* accessed on 04/17/17.

[3] *https://alaskafisheries.noaa.gov/sites/default/files/reports/car120_psc_goa2014.pdf* accessed on 04/17/17.

[4] *https://alaskafisheries.noaa.gov/sites/default/files/reports/car120_psc_goa2015.pdf* accessed on 04/17/17.

[5] *https://alaskafisheries.noaa.gov/sites/default/files/reports/car120_psc_goa2016.pdf* accessed on 04/17/17.

[6] *https://alaskafisheries.noaa.gov/sites/default/files/reports/car120_psc_goa2014.pdf* accessed on 04/17/17.

[7] *https://alaskafisheries.noaa.gov/sites/default/files/reports/car120_psc_goa2015.pdf* accessed on 04/17/17.

[8] *https://alaskafisheries.noaa.gov/sites/default/files/reports/car120_psc_goa2016.pdf* accessed on 04/17/17.

[9] *https://alaskafisheries.noaa.gov/sites/default/files/reports/car120_psc_bsai_with_cdq2014.pdf* accessed on 04/17/17.

[10] *https://alaskafisheries.noaa.gov/sites/default/files/reports/car120_psc_bsai_with_cdq2015.pdf* accessed on 04/17/17.

[11] *https://alaskafisheries.noaa.gov/sites/default/files/reports/car120_psc_bsai_with_cdq2016.pdf* accessed on 04/17/17.

[12] *https://alaskafisheries.noaa.gov/sites/default/files/reports/car120_psc_goa2014.pdf* accessed on 04/17/17.

[13] *https://alaskafisheries.noaa.gov/sites/default/files/reports/car120_psc_goa2015.pdf* accessed on 04/17/17.

[14] *https://alaskafisheries.noaa.gov/sites/default/files/reports/car120_psc_goa2016.pdf* accessed on 04/17/17.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF246

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Chevron Richmond Refinery Long Wharf Maintenance and Efficiency Project in San Francisco Bay, California

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Chevron to incidentally harass, by Level B harassment only, marine mammals during construction activities associated with the Richmond Refinery Long Wharf Maintenance and Efficiency Project (WMEP) in San Francisco Bay, California.

DATES: The Authorization is in effect for one year beginning January 1, 2018 through December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of Chevron's application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region 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 21, 2014, NMFS received a request from Chevron for authorization to take marine mammals incidental to pile driving and removal associated with the WMEP in San Francisco Bay, California. The project was delayed due to funding constraints. Chevron submitted a revised version of the request on November 16, 2016, which was deemed adequate and complete on January 12, 2017. Chevron will undertake the WMEP in order to comply with current Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) requirements and to improve safety and efficiency at the Long Wharf. Construction would start in 2018, and be complete by the fourth quarter of 2022. Therefore, Chevron expects to request additional IHAs in association with this multi-year project. The effective dates for this first IHA would be from January 1, 2018 through December 31, 2018. The use of both vibratory and impact pile driving during pile removal and installation during the four-year construction period is expected to produce underwater sound at levels that have the potential to result in Level B (behavioral) harassment of marine mammals. However, only impact driving will occur during 2018 and will be covered under the issued IHA. Species expected to occur in the area and for which take is authorized include California sea lion (*Zalophus californianus*) and Pacific harbor seal (*Phoca vitulina*).

Description of the Specified Activity

Overview

Chevron's Richmond Refinery Long Wharf (Long Wharf) is the largest marine oil terminal in California. Its operations are regulated primarily by the California State Lands Commission (CSLC) through a State Lands lease, Article 5 of CSLC regulations, and MOTEMS (California Building Code (CBC) Chapter 31F). The Long Wharf has existed in its current location since the early 1900s (Figure 1–1 in Application). The Berth 2 fender system (timber pile and whaler) was designed and installed in 1940. Marine loading arms, gangways, and fender systems at Berths 1, 3 and 4 were installed in 1972. The Berth 4 fender panels were replaced in 2011 and the Berth 1 fender panels were replaced in 2012. The existing configuration of these systems have limitations to accepting more modern, fuel efficient vessels with shorter, parallel mid-body hulls and in some cases do not meet current MOTEMS requirements.

The purpose of the WMEP is to comply with current MOTEMS requirements and to improve safety and efficiency at the Long Wharf. To meet MOTEMS requirements, the fendering system at Berth 2 is being updated and the Berth 4 loading platform will be seismically retrofitted to stiffen the structure and reduce movement of the Long Wharf in the event of a level 1 or 2 earthquake. Safety will be improved by replacing gangways and fire monitors. Efficiency at the Long Wharf will be improved by updating the fender system configuration at Berth 4 to accommodate newer, more fuel efficient vessels and thus reduce idling time for vessels waiting to berth. Further, efficiency will be improved by updating the fender system at Berth 1 to accommodate barges, enabling balanced utilization across Berths 1, 2, and 3.

Dates and Duration

Project construction will start in 2018 and be completed by the fourth quarter of 2022. Pile driving activities will be timed to occur within the standard NMFS work windows for listed fish species (June 1 through November 30) during those 4 years. The effective date for this initial IHA will be from January 1, 2018 through December 31, 2018. Over the course of the multi-year project, 249 piles of various sizes will be installed via impact and vibratory driving; 161 piles will be removed via vibratory removal; and 209 driving days are planned. During the first year of construction covered under this IHA, 8,24-inch concrete piles will be installed by impact driving over 4 workdays at Berth 2.

Specified Geographic Region

The Long Wharf is located in San Francisco Bay (the Bay) just south of the eastern terminus of the Richmond-San Rafael Bridge (RSRB) in Contra Costa County. The wharf is located in the northern portion of the Central Bay, which is generally defined as the area between the RSRB, Golden Gate Bridge, and San Francisco-Oakland Bay Bridge. The South Bay is located south of the San Francisco-Oakland Bay Bridge. San Pablo Bay extends north of the RSRB.

Detailed Description of Specified Activities

The complete multi-year project will involve modifications at 4 berths (Berths 1, 2, 3, and 4) as shown in Figure 1–1 in the Application. Planned modifications to the Long Wharf include replacing gangways and cranes, adding new mooring hooks and standoff fenders, adding new dolphins and catwalks, and modifying the fire water system at Berths 1, 2, 3 and/or 4, as well as the seismic retrofit to the Berth 4 loading platform. The type and numbers of piles to be installed, as well as those that will be removed, are summarized in Table 1–1 in the Application and an overview of the modifications at Berths 1 to 4 are shown in Figure 1–2 in the Application.

The combined modifications to Berths 1–4 will require the installation of 141 new concrete piles to support new and replacement equipment and their associated structures. The Berth 4 loading platform will add 8, 60-inch diameter steel piles as part of the seismic retrofit.

The project will also add 4 clusters of 13 composite piles each (52 total) as markers and protection of the new batter (driven at an angle) piles on the east side of the Berth 4 retrofit. The project will remove 106 existing timber piles, two existing 18-inch and two existing 24-inch concrete piles. A total of 12 24-inch temporary steel piles will also be installed and removed during the seismic retrofit of Berth 4.

The modifications at each berth are summarized below.

Modifications at Berth 1 include the following:

- Replace gangway to accommodate barges and add a new raised fire monitor.
- Construct a new 24′ x 20′ mooring dolphin and hook to accommodate barges.
- Construct a new 24′ x 25′ breasting dolphin and 13′ x 26′ breasting point with standoff fenders to accommodate barges. The new breasting dolphin will require removal of an existing catwalk and two piles and moving a catwalk to a slightly different location to maintain access to currently existing dolphins. A new catwalk will be installed to provide access to the new breasting dolphin.
- A portion of the existing gangway will be removed. The remaining portion is used for other existing services located on its structure.

Much of this work will be above the water or on the deck of the terminal. The mooring dolphin and hook, breasting dolphin, and new gangway will require installation of 42 new 24-inch square concrete piles using impact driving methods.

Modifications at Berth 2 include the following:

- Install new gangway to replace portable gangway and add a new elevated fire monitor.
- Replace one bollard with a new hook.
- Install four new standoff fenders (to replace timber fender pile system).
- Replace existing auxiliary and hose cranes and vapor recovery crane to accommodate the new standoff fenders.
- Remove the existing timber fender pile system along the length of the Berth (~650 ft.)
- Three (3) existing brace piles (22-inch square concrete jacketed timber piles) would be removed by cutting below the mud line if possible.

These modifications will require the installation of 51 new 24-inch square concrete piles, using impact driving methods, to support the gangway, standoff fenders, hose crane, and auxiliary crane. To keep Berth 2 operational during construction, four temporary fenders will be installed, supported by 36 temporary 14-inch H-piles driven using vibratory methods. It is expected that the H-piles would largely sink under their own weight and would require very little driving. The H-piles and temporary fenders will be removed once the permanent standoff fenders are complete. The auxiliary and hose cranes are being replaced with cranes with longer reach to accommodate the additional distance of the new standoff fenders. The new vapor recovery crane would be mounted on an existing pedestal and not require in-water work.

Modifications at Berth 3 include the following:

- Install new fixed gangway to replace portable gangway and add a new raised fire monitor. The gangway would be supported by four, 24-inch square concrete piles. This would be the only in-water work for modifications at Berth 3.

Modifications at Berth 4 include the following:

- Install two new 36′ x 20′ dolphins with standoff fenders (two per dolphin) and two catwalks.
- Seismically retrofit the Berth 4 loading platform including bolstering and relocation of piping and electrical facilities.

The new fenders would add 44 new 24-inch square concrete piles.

The seismic retrofit would structurally stiffen the Berth 4 Loading Platform under seismic loads. This will require cutting holes in the concrete decking and driving 8, 60-inch diameter hollow steel batter piles, using impact pile driving. To accommodate the new retrofit, an existing sump will be replaced with a new sump and two, 24-inch square concrete piles will be removed or cut to the mudline. The engineering team has determined that to drive the 60-inch batter piles, twelve temporary steel piles, 24 inches in diameter, will be needed to support templates for the angled piles during driving. Two templates are required, each 24 feet by 4 feet and supported by up to six 24-inch steel pipe piles. The templates will be above water. The project would also add 4 clusters of 13 composite piles each (52 total composite piles) as markers and protection of the new batter piles on the east side of the retrofit. See Table 1 for pile summary information.

Table 1. Summary of Pile Types, Sizes, Locations, and Installation/Removal Methods for Full Project 2018-2022.

Item	Description	No. Piles	Pile Installation / Removal Method
New Installation	Berth 1 Mooring Hook Dolphin	13	Impact
	Berth 1 Outer Breasting Dolphin	17	Impact
	Berth 1 Inner Breasting Point	8	Impact
	Berth 1 Gangway	4	Impact
	Berth 2 South Outside Fender	10	Impact
	Berth 2 South Inside Fender	10	Impact
	Berth 2 North Inside Fender	9	Impact
	Berth 2 North Outside Fender	10	Impact
	Berth 2 Main Hose Crane	4	Impact
	Berth 2 Aux Crane	4	Impact
	Berth 2 Gangway	4	Impact
	Berth 3 Gangway	4	Impact
	Berth 4 South Breasting Dolphin	22	Impact
	Berth 4 North Breasting Dolphin	22	Impact
	Total 24-inch Square Concrete Piles	**141**	
	Berth 4 Loading Platform Retrofit (60-inch-diameter Steel Piles)	8	Impact
	Berth 4 Barrier Piles (4 Clusters of 13 Composite Piles)	52	Vibrate
	Total	**201**	
Permanent Removal	Berth 1 Pile Removal	-2	Vibrate
	Berth 2 Pile Removal (106 Wooden - Actual Count)	-106	Vibrate
	Berth 2 Brace Piles (22-inch Square Concrete Jacketed Timber Piles)	-3	Cut
	Berth 4 Concrete Pile Removal	-2	Cut
	Total Removal	**-113**	
Net Change		**88**	
Temporary	Berth 1 Pile Installation and Removal	36	Vibrate
	Berth 2 Whaler Installation and Removal (excluding wooden Piles)	12	Vibrate
Total Installation		**249**	
Total Removal		**116**	

Note that the issued IHA covers actions occurring during 2018 only. These actions include the installation of 8, 24-inch concrete piles by impact hammer driving over 4 workdays. These piles will replace existing auxiliary and hose cranes and vapor recovery crane at Berth 2. Impact installation will occur utilizing a DelMag D62 22 or similar diesel hammer, producing approximately 165,000 ft lbs maximum energy (may not need full energy) over a duration of approximately 20 minutes per pile.

Mitigation, monitoring, and reporting measures are described in in detail later in the document (*Mitigation* and *Monitoring and Reporting* sections).

Comments and Responses

A notice of NMFS's proposal to issue an IHA to Chevron was published in the **Federal Register** on March 24, 2017 (82 FR 05025). That notice described, in detail, Chevron's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission. The Marine Mammal Commission recommended that NMFS issue the requested IHA, subject to inclusion of the mitigation, monitoring, and reporting measures as described in our notice of proposed IHA and the application. All measures proposed in the initial **Federal Register** notice are included within the IHA.

Description of Marine Mammals in the Area of the Specified Activity

Although 35 species of marine mammals can be found off the coast of California, few species venture into San Francisco Bay, and only Pacific harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), and harbor porpoises (*Phocoena phocoena*) make the Bay a permanent home. Small numbers of gray whales (*Eschrichtius robustus*) are regularly sighted in the Bay during their yearly migration, though most sightings tend to occur in the Central Bay near the Golden Gate Bridge. Two other species that may occasionally occur within San Francisco Bay include the Steller sea lion (*Eumetopias jubatus*) and bottlenose dolphin (*Tursiops truncatus*). Table 2 provides information about the species that are expected to potentially be present in the project area. A detailed description of the species likely to be affected by the project, including brief introductions to the species and relevant stocks as well as available information regarding population trends

and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (82 FR 15025; March 24, 2017). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' Web site (*www.nmfs.noaa.gov/pr/species/mammals/*) for generalized species accounts.

TABLE 2—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF THE PROJECT [1]

Species	Stock	ESA/MMPA status; strategic (Y/N) [2]	Stock abundance (CV/N_{min}) [3]	PBR [4]	Occurrence in/near project	Seasonal
Pacific harbor seal, *Phoca vitulina*.	California Stock	-/N	30,968 (-/27,348)	1,641	Common	Year-round.
California sea lion, *Zalophus californianus*.	Eastern U.S. Stock	-/N	296,750 (-/153,337)	9,200	Uncommon	Year-round.
Harbor porpoise, *Phocoena phocoena*.	San Francisco-Russian River Stock.	-/N	9,886 (0.51/6,625)	66	Common in the vicinity of the Golden Gate and Richardson's Bay, Rare elsewhere.	Year-round.
Gray whale, *Eschrichtius robustus*.	Eastern North Pacific Stock.	-/N	20,990 (0.05/20,125) ..	624	Rare to occasional	December–April.

[1] Source: Carretta *et al.,* 2016

[2] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species' (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

[4] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

The effects of underwater noise from construction activities for the project have the potential to result in behavioral harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (82 FR 15025; March 24, 2017) included a discussion of the potential effects of anthropogenic noise on marine mammals, therefore that information is not repeated here; please refer to the **Federal Register** notice for that information.

The primary impacts to marine mammal habitat are associated with elevated sound levels produced by impact pile driving in the area. However, other potential impacts to the surrounding habitat from physical disturbance are also possible. The project would not result in permanent impacts to habitats used directly by marine mammals, such as haulout sites, but may have potential short-term impacts to food sources and minor impacts to the immediate substrate during installation of piles during the project. These potential effects are discussed in detail in the **Federal Register** notice for the proposed IHA (82 FR 15025; March 24, 2017), therefore, that information is not repeated here.

Estimated Take

This section includes an estimate of the number of incidental takes expected to occur as a result of the specified activities considered pursuant to this IHA, which will inform both NMFS' consideration of whether the number of takes is small and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral for individual marine mammals resulting from exposure to impact driving. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown, soft start discussed in detail below in *Proposed Mitigation* section), Level A harassment is neither anticipated nor authorized. The death of a marine mammal is also a type of incidental take. However, as described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

In order to estimate the potential incidents of take that may occur incidental to the specified activity, we must first estimate the extent of the sound field that may be produced by the activity and then consider the sound field in combination with information about marine mammal density or abundance in the project area. We first provide information on applicable sound thresholds for determining effects to marine mammals before describing the information used in estimating the sound fields, the available marine mammal density or abundance information, and the method of estimating potential incidences of take.

Sound Thresholds—NMFS uses sound exposure thresholds to determine when an activity that produces underwater sound might result in impacts to a marine mammal such that a take by harassment might occur. On August 4, 2016, NMFS released its Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Guidance) (81 FR 51694) (available at *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm*). This new guidance established new thresholds for predicting auditory injury, which equates to Level A harassment under the MMPA. As will be discussed below, NMFS has revised Permanent Threshold Shift (PTS) (and Temporary Threshold Shift (TTS)) onset acoustic thresholds for impulsive and non-impulsive sound as part of its new acoustic guidance. The

Guidance does not address Level B harassment; therefore, NMFS uses the current acoustic exposure criteria to determine exposure to underwater noise sound pressure levels for Level B harassment (Table 5).

During the installation of piles, the project has the potential to increase airborne noise levels. Airborne pile-driving root means square (RMS) noise levels above the NMFS airborne noise thresholds are not expected to extend to the Castro Rocks haul-out site, which is located 650 meters (m) north of Long Wharf. In addition, the Castro Rocks haul out is subject to high levels of background noise from the Richmond Bridge, ongoing vessel activity at the Long Wharf, ferry traffic, and other general boat traffic. Any pinnipeds that surface in the area over which the airborne noise thresholds may be exceeded would have already been exposed to underwater noise levels above the applicable thresholds and thus would not result in an additional incidental take. Airborne noise is not considered further.

Source Levels—Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. In order to establish distances to PTS and behavioral harassment isopleths, the sound source level associated with a specific pile driving activity must be measured directly or estimated using proxy information. The intensity of pile driving sounds is greatly influenced by factors such as the material type and dimension of piles. To estimate the noise effects of the 24-inch square concrete piles planned for use in Year 1 of this project, Chevron reviewed sound pressure levels (SPLs) from other projects conducted under similar circumstances. These projects include the Pier 40 Berth Construction in San Francisco, and the Berth 22 and Berth 32 reconstruction projects at the Port of Oakland. However, NMFS elected to use data from only the Pier 40 project since 24-inch square concrete piles were installed at that location. At Berth 22 and Berth 32, 24-inch octagonal concrete piles were installed. The differences in pile shape may result in varying SPLs. Impact pile driving at Pier 40 resulted in measured RMS values ranging from 162–174 dB and peak SPLs from 172 to 186 dB. SEL measurements were not recorded. From Pier 40, NMFS selected a RMS value of 171 decibel (dB), which was the average of the eight piles tested, excluding two piles that utilized ''jetting.'' Jetting consists of employing a carefully directed and pressurized flow of water to assist in pile placement by liquefying soils at the pile tip during pile placement. Jetting tends to increase driving efficiency while decreasing sound levels and will not be utilized by Chevron during this project. Note that NMFS had incorrectly used a RMS value of 170 dB in the Notice of Proposed IHA. Utilizing the corrected value of 171 dB results in slightly larger predicted Level A and Level B isopleths. NMFS used an identical approach to arrive at an average peak value of 181 dB based on results from Pier 40.

Sound Propagation—Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$TL = B * \log_{10} (R_1/R_2)$,

Where:

R1 = the distance of the modeled SPL from the driven pile, and

R2 = the distance from the driven pile of the initial measurement.

B = spreading loss value

This formula does not account for loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log(range)). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log(range)). As is common practice in coastal waters, here we assume practical spreading loss (4.5 dB reduction in sound level for each doubling of distance) here. Practical spreading is a compromise that is often used under conditions where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions.

Level A Zone—Chevron's Level A harassment zone was calculated by utilizing the methods presented in Appendix D of NMFS' Guidance and the accompanying User Spreadsheet. The Guidance provides updated PTS onset thresholds using the cumulative SEL (SEL_{cum}) metric, which incorporates marine mammal auditory weighting functions, to identify the received levels, or acoustic thresholds, at which individual marine mammals are predicted to experience changes in their hearing sensitivity for acute, incidental exposure to all underwater anthropogenic sound sources. The Guidance and its companion User Spreadsheet provide alternative methodology for incorporating these more complex thresholds and associated weighting functions.

The User Spreadsheet accounts for weighting functions using Weighting Factor Adjustments (WFAs), and NMFS used the recommended values for impact driving therein (2 kilohertz (kHz)). Pile driving durations were estimated based on similar project experience. NMFS' new acoustic thresholds use dual metrics of SELcum and peak sound level (PK) for impulsive sounds (*e.g.,* impact pile driving). The noise levels noted above were used in the Spreadsheet for 24-inch square concrete piles. It was estimated that two piles would be installed in one 24-hr workday with installation for each pile requiring approximately 300 blows. NMFS used an RMS of 171 dB and pulse duration of 0.1 seconds. Measured SEL values were not available for 24-inch square concrete piles.

Utilizing the User Spreadsheet, NMFS applied the updated PTS onset thresholds for impulsive PK and SELcum in the new acoustic guidance to determine distance to the isopleths for PTS onset for impact pile driving. In determining the cumulative sound exposure levels, the Guidance considers the duration of the activity, the sound exposure level produced by the source during a 24-hr period, and the generalized hearing range of the receiving species. In the case of the duel metric acoustic thresholds for impulsive sound, the larger of the two isopleths for calculating PTS onset is used. Results in Table 4 display the Level A injury zones for the various hearing groups.

TABLE 4—INJURY ZONES AND SHUTDOWN ZONES FOR HEARING GROUPS ASSOCIATED WITH INSTALLATION OF 24-INCH CONCRETE PILES VIA IMPACT DRIVING

Hearing group	Low-frequency cetaceans (gray whale)	Mid-frequency cetaceans	High-frequency cetaceans (harbor porpoise)	Phocid pinnipeds (harbor seal)	Otariid pinnipeds (CA sea lion)
PTS Onset Acoustic Thresholds—Impulsive *. (Received Level)	Lpk,flat: 219 dB ..... L_E,LF,24h: 183 dB	Lpk,flat: 230 dB ..... L_E,MF,24h: 185 dB ...	Lpk,flat: 202 dB ..... L_E,HF,24h: 155 dB	Lpk,flat: 218 dB ..... L_E,PW,24h: 185 dB ...	Lpk,flat: 232 dB L_E,OW,24h: 203 dB
PTS Isopleth to threshold (m).	24.3	0.9	28.9	13.0	0.9

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

The zone of influence (ZOI) refers to the area(s) in which SPLs equal or exceed NMFS' current Level B harassment thresholds (160 dB for impulse sound). Calculated radial distances to the 160 dB threshold assume a field free of obstruction. Assuming a source level of 171 dB RMS, installation of the 24-inch concrete piles is expected to produce underwater sound exceeding the Level B 160 dB RMS threshold over a distance of 54 meters (177 feet) (Table 5).

TABLE 5—ISOPLETH FOR LEVEL B HARASSMENT ASSOCIATED WITH IMPACT DRIVING OF 24-INCH CONCRETE PILES

Criterion	Definition	Threshold	Isopleth (distance from source)
Level B harassment	Behavioral disruption	160 dB RMS ..... (impulse sources)	54m

Density/Abundance—Data specifying a marine mammal's density or abundance in a given area can often be used to generate exposure estimates. However, no systematic line transect surveys of marine mammals have been performed in the San Francisco Bay near the project site. Density information for marine mammal species has been generated by Caltrans based on 15 years (2000–2015) of observations as part of the San Francisco-Oakland Bay Bridge replacement project (Caltrans 2016). The data revealed densities of 0.00004 animals/kilometer (km² for gray whale, 0.021 animals/km² for harbor porpoise, 0.09 animals/km² for California sea lion, and 0.17 animals/km² for harbor seal. Utilization of these data to develop exposure estimates results in very small exposure values. Despite the near zero estimate provided through use of the Caltrans density data, local observational data led us to believe that this estimate may not be accurate in illustrating the potential for take at this particular site, so we have to use other information. Instead, NMFS relied on local observational data as described below.

Take Estimate—The estimated number of marine mammals that may be exposed to noise at levels expected to result in take as defined in the MMPA is determined by comparing the calculated areas over which the Level B harassment threshold may be exceeded, as described above, with the expected distribution of marine mammal species within the vicinity of the project. NMFS calculated take qualitatively utilizing observational data taken during marine mammal monitoring associated with the RSRB retrofit project, the San Francisco-Oakland Bay Bridge replacement project, and other marine mammal observations for San Francisco Bay. As described previously in the *Effects* section, Level B Harassment is expected to occur and is authorized in the numbers identified below.

Pacific Harbor Seal

Castro Rocks is the largest harbor seal haul out site in the northern part of San Francisco Bay and is the second largest pupping site in the Bay (Green *et al.,* 2002). The pupping season is from March to June in San Francisco Bay. During the molting season (typically June-July and coinciding with the period when piles will be driven) as many as 129 harbor seals have been observed using Castro Rocks as a haul out. Harbor seals are more likely to be hauled out in the late afternoon and evening, and are more likely to be in the water during the morning and early afternoon (Green *et al.,* 2002). However, during the molting season, harbor seals spend more time hauled out and tend to enter the water later in the evening. During molting, harbor seals can stay onshore resting for an average of 12 hours per day during the molt compared to around 7 hours per day outside of the pupping/molting seasons (NPS 2014).

Tidal stage is a major controlling factor of haul out usage at Castro Rocks with more seals present during low tides than high tide periods (Green *et al.,* 2002). Additionally, the number of seals hauled out at Castro Rocks also varies with the time of day, with proportionally more animals hauled out during the nighttime hours (Green *et al.,* 2002). Therefore, the number of harbor seals in the water around Castro Rocks will vary throughout the work period. The take estimates are based on the

highest number of harbor seals observed at Castro Rocks during 2007 to 2012 annual surveys (approximately 129 seals). Without site-specific data, it is impossible to determine how many hauled out seals enter the water and, of those, how many enter into the Level B harassment area. Given the relatively small size of the Level B harassment area compared to the large expanse of Bay water that is available to the seals, NMFS will assume that no more than 6 seals per day would enter into the Level B harassment area during the 40 minutes of pile driving per day scheduled to occur over 4 days. Therefore, NMFS authorizes Level B take of up to 6 seals per day may over 4 days of impact driving, resulting in a total of 24 authorized incidents of take.

California Sea Lion

Relatively few California sea lions are expected to be present in the project area during periods of pile driving, as there are no haul-outs utilized by this species in the vicinity. However, monitoring for the RSRB did observe small numbers of this species in the north and central portions of the Bay during working hours. During monitoring that occurred over a period of May 1998 to February 2002, California sea lions were sighted at least 90 times in the northern portion of the Central Bay and at least 57 times near the San Francisco-Oakland Bay Bridge in the Central Bay. During monitoring for the San Francisco-Oakland Bay Bridge Project in the Central Bay, California sea lions were observed on 69 occasions in the vicinity of the bridge over a 14-year period from 2000–2014 (Caltrans 2015b). The limited data regarding these observations do not allow a quantitative assessment of potential take. Given the limited driving time, low number of sea lions that are likely to be found in the northern part of the Bay, and small size of the level B zone, NMFS is authorizing a total of two incidents of take for California sea lions.

Harbor Porpoise

A small but growing population of harbor porpoises utilizes San Francisco Bay. Harbor porpoises are typically spotted in the vicinity of Angel Island and the Golden Gate Bridge (6 and 12 km southwest respectively) (Keener 2011), but may utilize other areas in the Central Bay in low numbers, including the project area. The density and frequency of this usage throughout the Bay is unknown. For this IHA, NMFS is not authorizing take of any harbor porpoise since the exclusion zone will be conservatively set at 55 m, which is larger than the Level B zone isopleth of 54 m, and take can be avoided.

Gray Whale

The only whale species that enters San Francisco bay with any regularity is the gray whale. Gray whales occasionally enter the Bay during their northward migration period, and are most often sighted in the Bay between February and May. Most venture only about 2 to 3 km past the Golden Gate Bridge, but gray whales have occasionally been sighted as far north as San Pablo Bay. Impact pile driving is not expected to occur during this time, however, and gray whales are not likely to be present at other times of year. Furthermore, the exclusion zone of 55 m for this species is larger than the Level B zone isopleth of 54 m. As such, NMFS is not authorizing any gray whale take.

Table 6 shows estimated Level B take for authorized species.

TABLE 6—SUMMARY OF ESTIMATED TAKE BY SPECIES (LEVEL B HARASSMENT)

Pile type	Pile driver type	Number of piles	Number of driving days	Species	
				Harbor seal	CA sea lion
24-inch square concrete	Impact	8	4	24	2

Mitigation

Under section 101(a)(5)(D) of the MMPA, NMFS shall prescribe the permissible methods of taking by harassment pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

To ensure that the ''least practicable impact'' will be achieved, NMFS evaluates mitigation measures in consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, their habitat; and
- their availability for subsistence uses (latter where relevant); the proven or likely efficacy of the measures; and the practicability of the measures for applicant implementation.

Mitigation for Mammals and Their Habitat

The following measures would apply to Chevron's mitigation through the exclusion zone and zone of influence (ZOI):

Time Restriction—For all in-water pile driving activities, Chevron shall operate only during daylight hours when visual monitoring of marine mammals can be conducted.

Seasonal Restriction—To minimize impacts to listed fish species, pile-driving activities would occur between June 1 and November 30.

Exclusion Zone—For all pile driving activities, Chevron will establish an exclusion zone intended to contain the area in which Level A harassment thresholds are exceeded. The purpose of the exclusion zone is to define an area within which shutdown of construction activity would occur upon sighting of a marine mammal within that area (or in anticipation of an animal entering the defined area), thus preventing potential injury of marine mammals. The calculated distance to Level A harassment isopleths threshold during impact pile driving, assuming a maximum of 2 piles per day is 28.9 m for harbor porpoise; 13.0 m for harbor seal; 0.9 m for California sea lion, and; 24.3 m for gray whales.

NMFS will require a 15 m exclusion zone for harbor seals and California sea lions. In order to prevent any take of the cetacean species, a 55 m exclusion zone will be required for harbor porpoises and gray whales, which exceeds the Level B harassment isopleth. A shutdown will occur prior to a marine mammal entering the shutdown zones. Activity will cease until the observer is confident that the animal is clear of the shutdown zone. The animal will be considered clear if:

- It has been observed leaving the shutdown zone; or
- It has not been seen in the shutdown zone for 30 minutes for cetaceans and 15 minutes for pinnipeds.

10-Meter Shutdown Zone—During the in-water operation of heavy machinery (*e.g.,* barge movements), a 10-m shutdown zone for all marine mammals

will be implemented. If a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

Level B Harassment Zone (Zone of Influence)—The ZOI refers to the area(s) in which SPLs equal or exceed NMFS' current Level B harassment thresholds (160 dB rms for pulse sources). ZOIs provide utility for monitoring that is conducted for mitigation purposes (*i.e.,* exclusion zone monitoring) by establishing monitoring protocols for areas adjacent to the exclusion zone. Monitoring of the ZOI enables observers to be aware of, and communicate about, the presence of marine mammals within the project area but outside the exclusion zone and thus prepare for potential shutdowns of activity should those marine mammals approach the exclusion zone. However, the primary purpose of ZOI monitoring is to allow documentation of incidents of Level B harassment; ZOI monitoring is discussed in greater detail later (see *Monitoring and Reporting*). The modeled radial distances for the ZOI for impact pile driving of 24-inch square concrete piles is 54 m. NMFS will require a 55 m Level B zone for harbor seals and California sea lions.

In order to document observed incidents of harassment, monitors will record all marine mammals observed within the ZOI. Due to the relatively small ZOI and to the monitoring locations chosen by Chevron we expect that two monitors will be able to observe the entire ZOI.

The shutdown zone and ZOI shall be monitored throughout the time required to install a pile. If a harbor seal or California sea lion is observed entering the ZOI, a Level B exposure shall be recorded and behaviors documented. That pile segment shall be completed without cessation, unless the animal approaches the shutdown zone. Pile installation shall be halted immediately before the animal enters the Level A zone.

If any marine mammal species other than those for which take is authorized, or if a species for which authorization has been granted but the number of authorized takes has been met enters or approaches the ZOI, all activities shall be shut down until the animal is observed leaving the ZOI or it has not been observed in the ZOI for 30 minutes for cetaceans and 15 minutes for pinnipeds.

Ramp up/Soft-Start—A ''soft-start'' technique is intended to allow marine mammals to vacate the area before the pile driver reaches full power. For impact driving, an initial set of three strikes would be made by the hammer at reduced energy, followed by a 30-sec waiting period, then two subsequent three- strike sets before initiating continuous driving. Soft start will be required at the beginning of each day's impact pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer.

If a marine mammal is present within a shutdown zone, ramping up shall be delayed until the animal(s) leaves the relevant shutdown zone. Activity shall begin only after the MMO has determined, through sighting, that the animal(s) has moved outside the relevant shutdown zone or it has not been observed in the shutdown zone for 30 minutes for cetaceans and 15 minutes for pinnipeds.

If an authorized species is present in the Level B harassment zone, ramping up shall begin and a Level B take shall be documented. Ramping up shall occur when these species are in the Level B harassment zone whether they entered the Level B zone from the Level A zone, or from outside the project area.

Pile Caps/Cushions—Chevron will employ the use of pile caps or cushions as sound attenuation devices to reduce impacts from sound exposure during impact pile driving.

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, we have determined that the required mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the action area (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Chevron will collect sighting data and will record behavioral responses to construction activities for marine mammal species observed in the project location during the period of activity. Monitoring will be conducted by qualified marine mammal observers (MMO), who are trained biologists, with the following minimum qualifications:

- Independent observers (*i.e.,* not construction personnel) are required;
- At least one observer must have prior experience working as an observer;
- Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience;
- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and

times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior;

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary; and

• NMFS will require submission and approval of observer CVs.

Chevron will monitor the exclusion zones and Level B harassment zone before, during, and after pile driving, with at least two observers located at the best practicable vantage points. Based on our requirements, the Marine Mammal Monitoring Plan would implement the following procedures for pile driving:

• During observation periods, observers will continuously scan the area for marine mammals using binoculars and the naked eye;

• Monitoring shall begin 30 minutes prior to impact pile driving;

• Observers will conduct observations, meet training requirements, fill out data forms, and report findings in accordance with this IHA;

• If the exclusion zone is obscured by fog or poor lighting conditions, pile driving will not be initiated until the exclusion zone is clearly visible. Should such conditions arise while impact driving is underway, the activity would be halted;

• Observers will be in continuous contact with the construction personnel via two-way radio. A cellular phone will be used for back-up communications and for safety purposes;

• Observers will implement mitigation measures including monitoring of the shutdown and monitoring zones, clearing of the zones, and shutdown procedures; and

• At the end of the pile-driving day, post-construction monitoring will be conducted for 30 minutes beyond the cessation of pile driving.

Sound Source Verification

Sound Source Verification (SSV) testing of impact driving will be conducted under this IHA. Little data exist for source levels associated with installation of 24-in square concrete piles (including data on single strike sound exposure level metrics). Chevron will conduct in-situ measurements during installation of four out of eight piles. The SSV will be conducted by an acoustical firm with prior experience conducting SSV tests. NMFS must approve the acoustic monitoring plan. Final results will be sent to NMFS. Findings will be used to establish Level A and Level B isopleths during impact driving of 24-in square concrete piles for future IHA's associated with this project.

Data Collection

We require that observers use approved data forms. Among other pieces of information, chevron will record detailed information about any implementation of shutdowns, including the distance of animals to the pile being driven, a description of specific actions that ensued, and resulting behavior of the animal, if any. In addition, Chevron will attempt to distinguish between the number of individual animals taken and the number of incidents of take, when possible. We require that, at a minimum, that the following information be recorded on sighting forms:

• Date and time that permitted construction activity begins or ends;

• Weather parameters (*e.g.,* percent cloud cover, percent glare, visibility) and Beaufort sea state;

• Species, numbers, and, if possible, sex and age class of observed marine mammals;

• Construction activities occurring during each sighting;

• Marine mammal behavior patterns observed, including bearing and direction of travel;

• Specific focus should be paid to behavioral reactions just prior to, or during, soft-start and shutdown procedures;

• Location of marine mammal, distance from observer to the marine mammal, and distance from pile driving activities to marine mammals;

• Record of whether an observation required the implementation of mitigation measures, including shutdown procedures and the duration of each shutdown; and

• Other human activity in the area. Record the hull numbers of fishing vessels if possible.

Reporting Measures

Chevron shall submit a draft report to NMFS within 90 days of the completion of marine mammal monitoring, or 60 days prior to the issuance of any subsequent IHA for this project (if required), whichever comes first. The annual report would detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. If no comments are received from NMFS within 30 days, the draft final report will become final. If comments are received, a final report must be submitted up to 30 days after receipt of comments. Reports shall contain the following information:

• Summaries of monitoring effort (*e.g.,* total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals);

• Analyses of the effects of various factors influencing detectability of marine mammals (*e.g.,* sea state, number of observers, and fog/glare); and

• Species composition, occurrence, and distribution of marine mammal sightings, including date, numbers, age/size/gender categories (if determinable), and group sizes.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), Chevron would immediately cease the specified activities and immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report would include the following information:

• Time, date, and location (latitude/longitude) of the incident;

• Name and type of vessel involved (if applicable);

• Vessel's speed during and leading up to the incident (if applicable);

• Description of the incident;

• Status of all sound source used in the 24 hours preceding the incident;

• Water depth;

• Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

• Description of all marine mammal observations in the 24 hours preceding the incident;

• Species identification or description of the animal(s) involved;

• Fate of the animal(s); and

• Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with Chevron to determine necessary actions to minimize the likelihood of further prohibited take and ensure MMPA compliance.

Chevron would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that Chevron discovers an injured or dead marine mammal, and the lead MMO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), Chevron would immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report would include the same information identified in the section above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with Chevron to determine whether modifications in the activities are appropriate.

In the event that Chevron discovers an injured or dead marine mammal, and the lead MMO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Chevron would report the incident to Office of Protected Resources, NMFS, and West Coast Regional Stranding Coordinator, within 24 hours of the discovery. Chevron would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Pile driving activities would be permitted to continue.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes, alone, is not enough information on which to base an impact determination. In addition to considering the authorized number of marine mammals that might be taken through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration, etc.), as well as effects on habitat, the status of the affected stocks, and the likely effectiveness of the mitigation. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into these analyses via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, this introductory discussion of our analyses applies to all the species listed in Table 7 given that the anticipated effects of Chevron's construction activities involving impact pile driving on marine mammals are expected to be relatively similar in nature. There is no information about the nature or severity of the impacts, or the size, status, or structure of any species or stock that would lead to a different analysis for this activity, or else species-specific factors would be identified and analyzed.

Impact pile driving activities associated with the project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance), from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when in-water construction is under way.

No marine mammal stocks for which incidental take authorization are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. No injuries or mortalities are anticipated to occur as a result of Chevron's impact pile driving activities. The relatively low marine mammal density and small shutdown zones make injury takes of marine mammals unlikely. In addition, the Level A exclusion zones would be thoroughly monitored before the impact pile driving occurs and driving activities would be would be postponed if a marine mammal is sighted entering the exclusion zones. The likelihood that marine mammals will be detected by trained observers is high under the environmental conditions described for the project. The employment of the soft-start mitigation measure would also allow marine mammal in or near the ZOI or exclusion zone to move away from the impact driving sound source. Therefore, the mitigation and monitoring measures are expected to eliminate the potential for injury and reduce the amount and intensity of behavioral harassment. Furthermore, the pile driving activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment.

The takes that are anticipated and authorized are expected to be limited to short-term Level B harassment (behavioral) as only eight piles will be driven over 4 days with each pile requiring approximately 20 minutes of driving time. Marine mammals present near the action area and taken by Level B harassment would most likely show overt brief disturbance (*e.g.* startle reaction) and avoidance of the area from elevated noise level during pile driving. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness for the affected individuals, and thus would not result in any adverse impact to the stock as a whole.

The project is not expected to have significant adverse effects on affected marine mammals' habitat. While EFH for several species does exist in the project area, the activities would not permanently modify existing marine mammal habitat. The activities may cause fish to leave the area temporarily. This could impact marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of affected habitat, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of non-auditory injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior; (3) the short duration of in-water construction activities (4 days, 160 minutes total driving time); (4) limited spatial impacts to marine mammal habitat; and (5) the presumed efficacy of the mitigation measures in reducing the effects of the specified activity to the level of least practicable impact. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals.

The specified activity is not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, NMFS compares the number of individuals taken to the most appropriate estimation of the relevant species or stock size in our determination of whether an authorization is limited to small numbers of marine mammals.

The numbers of animals authorized to be taken would be considered small relative to the relevant stocks or populations (<0.01 percent for both species as shown in Table 7) even if each estimated taking occurred to a new individual. However, the likelihood that each take would occur to a new individual is extremely low. Further, these takes are likely to occur only within some small portion of the overall regional stock.

TABLE 7—POPULATION ABUNDANCE ESTIMATES, TOTAL AUTHORIZED LEVEL B TAKE, AND PERCENTAGE OF POPULATION THAT MAY BE TAKEN FOR THE POTENTIALLY AFFECTED SPECIES DURING THE PROJECT

Species	Abundance*	Total level B take	Percentage of stock or population
Harbor seal	[1] 30,968	24	<0.01
California sea lion (U.S. Stock)	296,750	2	<0.01

* Abundance estimates are taken from the 2015 U.S. Pacific Marine Mammal Stock Assessments (Carretta *et al.,* 2016).
[1] California stock abundance estimate.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Issuance of an MMPA authorization requires compliance with the ESA. No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act (NEPA)

Issuance of an MMPA authorization requires compliance with NEPA. NMFS has established categorical exclusion (CE) status under NEPA for this action. As such, we have determined the issuance of the IHA is consistent with categories of activities identified in CE B4 of the Companion Manual for NAO 216–6A and we have not identified any extraordinary circumstances listed in Chapter 4 of the Companion Manual for NAO 216–6A that would preclude this categorical exclusion. NMFS has prepared a CE memorandum for the record.

Authorization

As a result of these determinations, NMFS has issued an IHA to Chevron for the harassment of small numbers of harbor seals and California sea lions incidental to the Richmond Refinery Long Wharf Maintenance and Efficiency Project in San Francisco Bay, California effective for one year beginning January 1, 2018, provided the previously mentioned mitigation, monitoring and reporting requirements are incorporated.

Dated: June 9, 2017.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2017–12295 Filed 6–13–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF436

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of an Outreach meeting of the North Pacific Fishery Management Council and St. Paul Residents.

SUMMARY: The North Pacific Fishery Management Council (Council) will meet June 26 through June 27, 2017.

DATES: Several Council members and Council staff will be meeting with community members and organizations on Monday, June 26 and Tuesday, June 27, 2017.

ADDRESSES: Meetings will be held in the Community Center on St. Paul Island, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Steve MacLean, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, June 26, 2017 Through Tuesday, June 27, 2017

Public outreach meetings with St. Paul community members and organizations will be held. Issues for discussion will include the local halibut fishery and halibut bycatch, the Bering Sea Crab fishery, conservation of Northern Fur Seals, and other pertinent fishery management issues. All meetings are open to the public. The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/*.

Although other non-emergency issues not on the agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: June 8, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–12257 Filed 6–13–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the Board of Visitors, Marine Corps University (''the Board'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d). The charter and contact information for the Board's Designated Federal Officer (DFO) can be obtained at *http://www.facadatabase.gov/.*

The Board provides the Secretary of Defense and the Deputy Secretary of Defense with independent advice and recommendations on matters pertaining to the Marine Corps University. The Board shall be composed of at least 7 and not more than 11 members who must be eminent authorities in the fields of education, defense, management, economics, leadership, academia, national military strategy, or international affairs. Members who are not full-time or permanent part-time Federal officers or employees are appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee members. Members who are full-time or permanent part-time Federal officers or employees are appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employee members. Each member is appointed to provide advice on behalf of the Government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Board-related travel and per diem, members serve without compensation. The DoD, as necessary and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Board, and all subcommittees must operate under the provisions of FACA and the Government in the Sunshine Act. Subcommittees will not work independently of the Board and must report all recommendations and advice solely to the Board for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Board. No subcommittee or any of its members can update or report, verbally or in writing, directly to the DoD or any Federal officers or employees. The Board's DFO, pursuant to DoD policy, must be a full-time or permanent part-time DoD employee, and must be in attendance for the duration of each and every Board/subcommittee meeting. The public or interested organizations may submit written statements to the Board membership about the Board's mission and functions. Such statements may be submitted at any time or in response to the stated agenda of planned Board meetings. All written statements must be submitted to the Board's DFO who will ensure the written statements are provided to the membership for their consideration.

Dated: June 9, 2017.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2017–12318 Filed 6–13–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2017–ICCD–0084]

Agency Information Collection Activities; Comment Request; Request for Title IV Reimbursement or Heightened Cash Monitoring 2 (HCM2)

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 14, 2017.

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–2017–ICCD–0084. 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. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 216–32, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jo-Anne Cheatom, 202–377–3730.

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: Request for Title IV Reimbursement or Heightened Cash Monitoring 2 (HCM2).

OMB Control Number: 1845–0089.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 732.

Total Estimated Number of Annual Burden Hours: 3,660.

Abstract: The collection of this information is needed in order for the Payment Analysts in Federal Student Aid, an office of the U. S. Department of Education, to review and process the institutional payment request for Title IV funds. The Higher Education Act of 1965, as amended (HEA) requires that the Secretary prescribe regulations to ensure that any funds eligible postsecondary institutions receive under the HEA are used solely for the purposes specified in and in accordance with the provision of the applicable program. 34 CFR 668.161 and 668.162 establish the rules and procedures for a participating institution to request, maintain, disburse, and manage Title IV program funds.

Dated: June 9, 2017.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017–12283 Filed 6–13–17; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[9956–83–OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Minnesota's request to revise its National Primary Drinking Water Regulations Implementation EPA-authorized program to allow electronic reporting.

DATES: EPA's approval is effective July 14, 2017 for the State of Minnesota's National Primary Drinking Water Regulations Implementation program, if no timely request for a public hearing is received and accepted by the Agency.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On March 27, 2017, the Minnesota Department of Health (MDH) submitted an amended application titled ''Compliance Monitoring Data Portal'' for revision to its EPA-approved drinking water program under title 40 CFR to allow new electronic reporting. EPA reviewed MDH's request to revise its EPA-authorized program and, based on this review, EPA determined that the application met the standards for approval of authorized program revision set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Minnesota's request to revise its Part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting under 40 CFR part 141 is being published in the **Federal Register**.

MDH was notified of EPA's determination to approve its application with respect to the authorized program listed above.

Also, in today's notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the State of Minnesota's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests should include the following information: (1) The name, address and telephone number of the individual, organization or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to consider when determining whether to grant the request; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and granted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming today's determination or rescinding such determination. If no timely request for a hearing is received and granted, EPA's approval of the State of Minnesota's request to revise its part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting will become effective 30 days after today's notice is published, pursuant to CROMERR section 3.1000(f)(4).

Matthew Leopard,

Director, Office of Information Management.

[FR Doc. 2017–12287 Filed 6–13–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–1017; FRL–9959–78]

Final Test Guideline; Product Performance Test Guidelines; OCSPP 810.3900 Laboratory Product Performance Testing Methods for Bed Bug Pesticide Products; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of a final test guideline, Laboratory Product Performance Testing Methods for Bed Bug Pesticide Products; OCSPP Test Guideline 810.3900. This test guideline is part of a series of test guidelines established by the Office of Chemical Safety and Pollution Prevention (OCSPP) for use in testing pesticides and chemical substances. The test guidelines serve as a compendium of accepted scientific methodologies and protocols that are intended to provide data to inform regulatory decisions. This test guideline provides guidance for conducting a study to determine pesticide product performance against bed bugs, and is used by EPA, the public, and companies that submit data to EPA.

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

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA is announcing the availability of a final test guideline, Laboratory Product Performance Testing Methods for Bed Bug Pesticide Products; OCSPP Test Guideline 810.3900.

This test guideline is part of a series of test guidelines established by OCSPP for use in testing pesticides and chemical substances to develop data for submission to the agency under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408 (21 U.S.C. 346a), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*), and the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*). The test guidelines serve as a compendium of accepted scientific methodologies and protocols that are intended to provide data to inform regulatory decisions under TSCA, FIFRA, and/or FFDCA.

The test guidelines provide guidance for conducting the test, and are also used by EPA, the public, and companies that are subject to data submission requirements under TSCA, FIFRA, and/or FFDCA. As guidance documents, the test guidelines are not binding on either EPA or any outside parties, and EPA may depart from the test guidelines where circumstances warrant and without prior notice. At places in this guidance, the agency uses the word ''should.'' In this guidance, use of ''should'' with regard to an action means that the action is recommended rather than mandatory. The procedures contained in the test guidelines are recommended for generating the data that are the subject of the test guideline, but EPA recognizes that departures may be appropriate in specific situations. You may propose alternatives to the recommendations described in the test guidelines, and the agency will assess them for appropriateness on a case-by-case basis.

II. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are or may be required to conduct testing of pesticides and chemical substances for submission to EPA under TSCA, FIFRA, and/or FFDCA, the agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

1. *Docket for this document.* The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–1017, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

2. *Electronic access to the OCSPP test guidelines.* To access OCSPP test guidelines electronically, please go to *http://www.epa.gov/ocspp/pubs/frs/home/testmeth.htm.* You may also access the test guidelines in *http://www.regulations.gov,* grouped by series under docket ID numbers: EPA–HQ–OPPT–2009–0150 through EPA–HQ–OPPT–2009–0159 and EPA–HQ–OPPT–2009–0576.

III. Overview

A. What action is EPA taking?

EPA is announcing the availability of a final test guideline under Series 810.3900 entitled ''Laboratory Product Performance Testing Methods for Bed Bug Pesticide Products'' and identified as OCSPP Test Guideline 810.3900. This guideline provides recommendations for the design and execution of laboratory studies to evaluate the performance of pesticide products intended to repel, attract, and/or kill the common bed bug (*Cimex lectularius*) in connection with registration of pesticide products under the FIFRA (7 U.S.C. 136, *et seq.*). This guidance applies to products in any formulation such as a liquid, aerosol, fog, or impregnated fabric, if intended to be applied to have a pesticidal purpose such as to attract, repel, or kill bed bugs. It does not apply to repellent products applied to human skin, and does not apply to those products exempt from FIFRA registration under 40 CFR 152.25.

B. How was this final test guideline developed?

EPA-registered pesticide products are an important part of pest management programs for the control of bed bugs. The agency developed the product performance guideline to standardize the approaches to testing methods to ensure the quality and validity of the efficacy data for these types of products. The agency attended entomology and bed bug specific conferences, consulted with leading bed bug academics, and consulted peer-reviewed scientific journal articles on the issues associated with the guideline to draft the original document. Further, EPA sought advice and recommendations from the FIFRA Scientific Advisory Panel (SAP). The SAP meeting, held on March 6–7, 2012, was announced in the **Federal Register** issue of January 11, 2012 (77 FR 1677) (FRL–9331–6). The guideline has been revised based on comments from the SAP and the public. The revisions include decreasing the number of individuals and replicates tested, rescinding the recommendation to test each field strain for its resistance ratio and including a resistance management statement, clarifying the agency's Good Laboratory Practices (GLP) requirements, reducing the recommended length of time

individuals are exposed to insecticides, recommending individuals to be observed up to 96 hours after treatment, and revising the statistical analyses recommendations.

Authority: 7 U.S.C. 136 *et seq.;* 15 U.S.C. 2601 *et seq.;* 21 U.S.C. 301 *et seq.*

Dated: May 16, 2017.

Wendy C. Hamnett,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2017–12347 Filed 6–13–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9963–68–ORD]

Human Studies Review Board; Notification of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Office of the Science Advisor announces two separate public meetings of the Human Studies Review Board (HSRB) to advise the Agency on the ethical and scientific review of research involving human subjects.

DATES: A virtual public meeting will be held on Wednesday, July 26, 2017, from 1:00 p.m. to approximately 5:00 p.m. Eastern Time. A separate, subsequent teleconference meeting is planned for Friday, September 15, 2017, from 2:00 p.m. to approximately 3:30 p.m. Eastern Time for the HSRB to finalize its Final Report of the July 26, 2017 meeting and review other possible topics.

ADDRESSES: Both of these meetings will be conducted entirely by telephone and on the Internet using Adobe Connect. For detailed access information visit the HSRB Web site: *https://www2.epa.gov/osa/human-studies-review-board*

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to receive further information should contact the HSRB Designated Federal Official (DFO), Jim Downing on telephone number (202) 564–2468; fax number: (202) 564–2070; email address: *downing.jim@epa.gov;* or mailing address: Environmental Protection Agency, Office of the Science Advisor, Mail code 8105R, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Meeting access: These meetings are open to the public. The full Agenda and meeting materials are available at the HSRB Web site: *https://www2.epa.gov/osa/human-studies-review-board* . For questions on document availability, or if you do not have access to the Internet, consult with the DFO, Jim Downing listed under **FOR FURTHER INFORMATION CONTACT**.

Special accommodations. For information on access or services for individuals with disabilities, or to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

How may I participate in this meeting?

The HSRB encourages the public's input. You may participate in these meetings by following the instructions in this section.

1. Oral comments. Requests to present oral comments during either meeting will be accepted up to Noon Eastern Time on Wednesday, July 19, 2017, for the July 26, 2017 meeting and up to Noon Eastern Time on Friday, September 8, 2017 for the September 15, 2017 teleconference. To the extent that time permits, interested persons who have not pre-registered may be permitted by the HSRB Chair to present oral comments during either meeting at the designated time on the agenda. Oral comments before the HSRB are generally limited to five minutes per individual or organization. If additional time is available, further public comments may be possible.

2. Written comments. Submit your written comments prior to the meetings. For the Board to have the best opportunity to review and consider your comments as it deliberates, you should submit your comments by Noon Eastern Time on Wednesday, July 19 2016, for the July 26, 2017 meeting, and by noon Eastern Time on Friday, September 8, 2017 for the September 15, 2017 teleconference. If you submit comments after these dates, those comments will be provided to the HSRB members, but you should recognize that the HSRB members may not have adequate time to consider your comments prior to their discussion. You should submit your comments to the DFO, Jim Downing listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

Background

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act 5 U.S.C. App.2 section 9. The HSRB provides advice, information, and recommendations on issues related to scientific and ethical aspects of third-party human subjects research that are submitted to the Office of Pesticide Programs (OPP) to be used for regulatory purposes.

Topic for discussion. On Wednesday, July 26, 2017, EPA's Human Studies Review Board will consider one topic: Field evaluation of three topically applied insect repellent products containing IR3535 against mosquitoes in Florida.

The Agenda and meeting materials for this topic will be available in advance of the meeting at *https://www2.epa.gov/osa/human-studies-review-board.*

On September 15, 2017, the Human Studies Review Board will review and finalize their draft Final Report from the July 26, 2017 meeting, in addition to other topics that may come before the Board. The HSRB may also discuss planning for future HSRB meetings. The agenda and the draft report will be available prior to the teleconference at *https://www2.epa.gov/osa/human-studies-review-board.*

Meeting minutes and final reports. Minutes of these meetings, summarizing the matters discussed and recommendations made by the HSRB, will be released within 90 calendar days of the meeting. These minutes will be available at *https://www2.epa.gov/osa/human-studies-review-board.* In addition, information regarding the HSRB's Final Report, will be found at *https://www2.epa.gov/osa/human-studies-review-board* or from Jim Downing listed under **FOR FURTHER INFORMATION CONTACT**.

Robert J. Kavlock,

EPA Science Advisor.

[FR Doc. 2017–12345 Filed 6–13–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

[Docket No. 17–06]

Notice of Filing of Complaint and Assignment: Tarik Afif Chaouch v. Demetrios Air Freight Co., Demetrios International Shipping Co., Inc., and Troy Container Line Ltd

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Tarik Afif Chaouch, hereinafter ''Complainant,'' against Demetrios Air Freight Co., Demetrios International Shipping Co., Inc., and Troy Container Line LTD, hereinafter ''Respondents.'' Complainant states it hired the Respondents to ship two cars to Algiers, Algeria.

Complainant alleges that due to an error the Respondents made on the bill

of lading, the shipment was ''impounded in Algiers, Algeria for approximately four months.'' Complainant alleges that this error resulted in costs for which complainant would not have otherwise been responsible. Complainant alleges that it is ''subject to injury as a result of the violations by respondent of sections 46 U.S.C. code § 41104 and more specifically paragraphs 4 and 5.''

Complainant seeks reparations in the amount of $21,086.70, and other relief. The full text of the complaint can be found in the Commission's Electronic Reading Room at *www.fmc.gov/17-06/.*

This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by June 8, 2018, and the final decision of the Commission shall be issued by December 21, 2018.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2017–12296 Filed 6–13–17; 8:45 am]

BILLING CODE 6731–AA–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–17–1015]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted 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 notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) 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; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

The National Electronic Health Records Survey (NEHRS) (OMB Control No. 0920–1015, Expires 04/30/2017)—Reinstatement with Change—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on ''utilization of health care'' in the United States. NEHRS was originally designed as a mail supplement to the National Ambulatory Medical Care Survey (NAMCS). Questions in NEHRS have been asked in NAMCS starting in 2001.

The purpose of NEHRS is to measure progress toward goals for electronic health records (EHRs) adoption. NEHRS target universe consists of all non-Federal office-based physicians (excluding those in the specialties of anesthesiology, radiology, and pathology) who are engaged in direct patient care.

NEHRS is the principal source of data on national and state-level EHR adoption in the United States. In 2008 and 2009, the sample size was 2,000 physicians annually. Starting in 2010, the annual sample size was increased five-fold, from 2,000 physicians to 10,302 physicians. The increased sample size allows for more reliable national estimates as well as state-level estimates on EHR adoption without having to be combined with NAMCS. For these reasons, in 2012 NEHRS became an independent survey, not as a supplement under NAMCS.

NEHRS collects information on characteristics of physician practices, the capabilities of EHRs in those practices, and intent to apply for meaningful use incentive payments. These data, together with trend data, may be used to monitor the adoption of EHR as well as accessing factors associated with EHR adoption. In 2017, a set of follow-up questionnaires will be incorporated into the survey that focuses on content related to physician attitudes on using EHRs.

Users of NEHRS data include, but are not limited to, Congressional offices, Federal agencies, state and local governments, schools of public health, colleges and universities, private industry, nonprofit foundations, professional associations, clinicians, researchers, administrators, and health planners. There is no cost to the respondents other than their time. The total estimated annualized burden hours are 6,295.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Office-based physicians	NEHRS	10,302	1	30/60
Office-based physicians	Follow-up NEHRS Elec Resp	858	1	20/60
Office-based physicians	Follow-up NEHRS Non-Elec Resp	859	1	20/60
Office-based physicians	Follow-up NEHRS Nonresp	1,717	1	20/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2017–12272 Filed 6–13–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10652]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by August 14, 2017.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10652 Virtual Groups for Merit-Based Incentive Payment System (MIPS)

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New collection of information request; *Title of Information Collection:* Virtual Groups for Merit-Based Incentive Payment System (MIPS); *Use:* CMS acknowledges the unique challenges that small practices and practices in rural areas may face with the implementation of the Quality Payment Program. To help support these practices and provide them with additional flexibility, CMS has created a virtual group reporting option starting with the 2018 MIPS performance period. CMS held webinars and small, interactive feedback sessions to gain insight from clinicians as we developed our policies on virtual groups. During these sessions, participants expressed a strong interest in virtual groups, and indicated that the right policies could minimize clinician burden and bolster clinician success.

This information collection request is related to the statutorily required virtual group election process proposed in the CY 2018 Quality Payment Program proposed rule. A virtual group is a combination of Tax Identification Numbers (TINs), which would include at least two separate TINs associated with a solo practitioner TIN and National Provider Identifier (TIN/NPI) or group with 10 or fewer MIPS eligible clinicians and another solo practitioner (TIN/NPI) or group with 10 or fewer MIPS eligible clinicians.

Section 1848(q)(5)(I) of the Act requires that CMS establish and have in place a process to allow an individual MIPS eligible clinician or group consisting of not more than 10 MIPS eligible clinicians to elect, with respect to a performance period for a year to be in a virtual group with at least one other such individual MIPS eligible clinician or group. The Act also provides for the use of voluntary virtual groups for certain assessment purposes, including the election of practices to be a virtual group and the requirements for the election process.

Section 1848(q)(5)(I)(i) of the Act also provides that MIPS eligible clinicians electing to be a virtual group must: (1) Have their performance assessed for the quality and cost performance categories in a manner that applies the combined performance of all the MIPS eligible clinicians in the virtual group to each MIPS eligible clinician in the virtual group for the applicable performance period; and (2) be scored for the quality and cost performance categories based on such assessment.

CMS will use the data collected from virtual group representatives to determine eligibility to participate in a virtual group, approve the formation of that virtual group, based on determination of each TIN size, and assign a virtual group identifier to the virtual group. The data collected will

also be used to assign a performance score to each TIN/NPI in the virtual group. *Form Number:* CMS–10652 (OMB control number: 0938–NEW); *Frequency:* Annually; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions and Individuals; *Number of Respondents:* 16; *Total Annual Responses:* 16; *Total Annual Hours:* 160. (For policy questions regarding this collection contact Michelle Peterman at 410–786–2591.)

Dated: June 8, 2017.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2017–12229 Filed 6–13–17; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Availability of Program Application Instructions for MIPPA Program Funds

Title: Medicare Improvements for Patients and Providers Act: State Plans for Medicare Savings Program, Low Income Subsidy & Prescription Drug Enrollment Outreach and Assistance.

Announcement Type: Initial.

Funding Opportunity Number: CIP–MI–17–001.

Statutory Authority: The statutory authority for grants under this program announcement is contained in the 2006 Reauthorization of the Older Americans Act—Section 202 and the Medicare Improvements for Patients and Providers Act of 2008—Section 119, Public Law (PL) 110–275 as amended by the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act), reauthorized by the American Taxpayer Relief Act of 2012 (ATRA), the Protecting Access to Medicare Act of 2014, and the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA).

Catalog of Federal Domestic Assistance (CFDA) Number: 93.071.

Dates: The deadline date for the submission of MIPPA Program State Plans is 11:59PM EST August 14, 2017.

I. Funding Opportunity Description

The purpose of MIPPA funding is to enhance state efforts to provide assistance to Medicare beneficiaries through statewide and local coalition building focused on intensified outreach activities to beneficiaries likely to be eligible for the Low Income Subsidy program (LIS) or the Medicare Savings Program (MSP), and to assist those beneficiaries in applying for benefits. ACL will provide MIPPA program funding to State Health Insurance Assistance Programs (SHIPs), Area Agencies on Aging (AAAs), and Aging and Disability Resource Center programs (ADRCs) to inform Medicare beneficiaries about available Medicare program benefits. ACL seeks plans from states that will describe how the MIPPA program funds will be used for beneficiary outreach, education, and one-on-one application assistance over the next year.

ACL requests that states submit a one (1) year state plan with specific project strategies to expand, extend, or enhance their one-on-one assistance, education, and group outreach efforts to Medicare beneficiaries on Medicare and assistance programs for those with limited incomes. States should describe how the SHIP, AAA, and ADRC efforts will be coordinated to provide outreach to beneficiaries with limited incomes statewide. States that are eligible to apply are asked to review previous MIPPA plans and update these plans to reflect successes achieved to date and direct their efforts to enhance and expand their MIPPA outreach activities. State agencies may prepare either one statewide plan or separate plans for each eligible State agency.

II. Award Information

1. Funding Instrument Type

These awards will be made in the form of grants to State Agencies for each MIPPA Priority Area:

Priority Area 1—Grants to State Agencies (the State Unit on Aging or the State Department of Insurance) that administer the State Health Insurance Assistance Program (SHIP) to provide enhanced outreach to eligible Medicare beneficiaries regarding their benefits, enhanced outreach and application assistance to individuals who may be eligible for the Medicare Low Income Subsidy (LIS) or the Medicare Savings Program (MSP), and for the purposes of conducting outreach activities aimed at preventing disease and promoting wellness.

Priority Area 2—Grants to State Units on Aging for Area Agencies on Aging to provide enhanced outreach to eligible Medicare beneficiaries regarding their Medicare benefits, enhanced outreach and one-on-one application assistance to individuals who may be eligible for the LIS or the MSP, and for the purposes of conducting outreach activities aimed at preventing disease and promoting wellness.

Priority Area 3—Grants to State Units on Aging that administer the Aging and Disability Resource Centers to provide outreach to individuals regarding Medicare Part D benefits, benefits available under the LIS and MSP, and for the purposes of conducting outreach activities aimed at preventing disease and promoting wellness.

2. Anticipated Total Priority Area Funding per Budget Period

ACL intends to make available, under this program announcement, grant awards for the three MIPPA priority areas. Funding will be distributed through a formula as identified in statute. The amounts allocated are based upon factors defined in statute and will be distributed to each priority area based on the formula. ACL will fund total project periods of up to one (1) year contingent upon availability of federal funds.

Priority Area 1—SHIP: $11.5 million in FY 2017 for state agencies that administer the SHIP Program.

Priority Area 2—AAA: $7.9 million in FY 2017 for State Units on Aging for Area Agencies on Aging and for Native American programs. Funding for Native American Programs ($270,000) is deducted from Priority 2 and is being allocated through a separate process.

Priority Area 3—ADRC: $6 million in FY 2017 for State Agencies that received an ACL, Centers for Medicare and Medicaid Services (CMS), Veterans Health Administration (VHA) Aging and Disability Resource Center (ADRC)/No Wrong Door System (NWD) grant to support the development of their ADRC/NWD Systems.

III. Eligibility Criteria and Other Requirements

1. Eligible Applicants for MIPPA Priority Areas 1, 2 and 3: Awards made under this announcement, by statute, will be made only to agencies of State Governments.

Priority Area 1: Only existing SHIP grant recipients are eligible to apply.

Priority Area 2: Only State Units on Aging are eligible to apply.

Priority Area 3: Only State Agencies that received an ACL, CMS, VHA Aging and Disability Resource Center (ADRC)/No Wrong Door System (NWD) grant to support the development of their ADRC/NWD Systems are eligible for MIPPA funding in FY 2017.

Eligibility may change if future funding is available.

2. Cost Sharing or Matching is not required.

3. DUNS Number.

All grant applicants must obtain and keep current a D–U–N–S number from

Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D–U–N–S number can be obtained from: *https://iupdate.dnb.com/iUpdate/viewiUpdateHome.htm.*

4. Intergovernmental Review

Executive Order 12372, Intergovernmental Review of Federal Programs, is not applicable to these grant applications.

IV. Submission Information

1. Application Kits

Application kits/Program Instructions are available at *www.grantsolutions.gov.* Instructions for completing the application kit will be available on the site.

2. Submission Dates and Times

To receive consideration, applications must be submitted by 11:59 p.m. Eastern time on August 14, 2017, through *www.GrantSolutions.gov.*

V. Agency Contacts

Direct inquiries regarding programmatic issues to U.S. Department of Health and Human Services, Administration for Community Living, Office of Healthcare Information and Counseling, Washington, DC 20201, attention: Isaac C. Long or by calling 202–795–7315 or by email *isaac.long@acl.hhs.gov.*

Dated: June 9, 2017.

Daniel P. Berger,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2017–12339 Filed 6–13–17; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0622]

Agency Information Collection Activities; Proposed Collection; Comment Request; Color Additive Certification Requests and Recordkeeping

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's regulations governing batch certification of color additives manufactured for use in foods, drugs, cosmetics, or medical devices in the United States.

DATES: Submit either electronic or written comments on the collection of information by August 14, 2017.

ADDRESSES: You may submit comments as follows. Late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 14, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of August 14, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2010–N–0622 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Color Additive Certification Requests and Recordkeeping.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov/* and insert the docket number, found in brackets in the

heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Color Additive Certification Requests and Recordkeeping—21 CFR Part 80—OMB Control Number 0910–0216—Extension

We have regulatory oversight for color additives used in foods, drugs, cosmetics, and medical devices. Section 721(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e(a)) provides that a color additive shall be deemed to be unsafe unless it meets the requirements of a listing regulation, including any requirement for batch certification, and is used in accordance with the regulation. We list color additives that have been shown to be safe for their intended uses in Title 21 of the Code of Federal Regulations (CFR). We require batch certification for all color additives listed in 21 CFR part 74 and for all color additives provisionally listed in 21 CFR part 82. Color additives listed in 21 CFR part 73 are exempted from certification.

The requirements for color additive certification are described in 21 CFR part 80. In the certification procedure, a representative sample of a new batch of color additive, accompanied by a ''request for certification'' that provides information about the batch, must be submitted to FDA's Office of Cosmetics and Colors. FDA personnel perform chemical and other analyses of the representative sample and, providing the sample satisfies all certification requirements, issue a certification lot number for the batch. We charge a fee for certification based on the batch weight and require manufacturers to keep records of the batch pending and after certification.

Under § 80.21, a request for certification must include: Name of color additive, manufacturer's batch number and weight in pounds, name and address of manufacturer, storage conditions, statement of use(s), certification fee, and signature of person requesting certification. Under § 80.22, a request for certification must include a sample of the batch of color additive that is the subject of the request. The sample must be labeled to show: Name of color additive, manufacturer's batch number and quantity, and name and address of person requesting certification. Under § 80.39, the person to whom a certificate is issued must keep complete records showing the disposal of all of the color additive covered by the certificate. Such records are to be made available upon request to any accredited representative of FDA until at least 2 years after disposal of all of the color additive.

The purpose for collecting this information is to help us assure that only safe color additives will be used in foods, drugs, cosmetics, and medical devices sold in the United States. The required information is unique to the batch of color additive that is the subject of a request for certification. The manufacturer's batch number is used for temporarily identifying a batch of color additive until FDA issues a certification lot number and for identifying a certified batch during inspections. The manufacturer's batch number also aids in tracing the disposal of a certified batch or a batch that has been denied certification for noncompliance with the color additive regulations. The manufacturer's batch weight is used for assessing the certification fee. The batch weight also is used to account for the disposal of a batch of certified or certification-denied color additive. The batch weight can be used in a recall to determine whether all unused color additive in the batch has been recalled. The manufacturer's name and address and the name and address of the person requesting certification are used to contact the person responsible should a question arise concerning compliance with the color additive regulations. Information on storage conditions pending certification is used to evaluate whether a batch of certified color additive is inadvertently or intentionally altered in a manner that would make the sample submitted for certification analysis unrepresentative of the batch. We check storage information during inspections. Information on intended uses for a batch of color additive is used to assure that a batch of certified color additive will be used in accordance with the requirements of its listing regulation. The statement of the fee on a certification request is used for accounting purposes so that a person requesting certification can be notified promptly of any discrepancies.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section/activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
80.21; Request for Certification	38	198	7,524	0.17 (10 minutes)	1,279
80.22; Sample to Accompany Request	38	198	7,524	0.05 (3 minutes)	376
Total				0.22 (13 minutes)	1,655

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section/activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
80.39; Record of Distribution	38	198	7,524	.25 (15 minutes)	1,881

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We base our estimate on our review of the certification requests received over the past 3 fiscal years (FY). The annual burden estimate for this information collection is 3,536 hours. The estimated reporting burden for this information collection is 1,655 hours and the estimated recordkeeping burden for this information collection is 1,881 hours. From FY 2014 to FY 2016, we processed an average of 7,524 responses (requests for certification of batches of color additives) per year. There were 38 different respondents, corresponding to an average of approximately 198 responses from each respondent per year. Using information from industry personnel, we estimate that an average of 0.22 hour per response is required for reporting (preparing certification requests and accompanying samples) and an average of 0.25 hour per response is required for recordkeeping.

Our Web-based Color Certification information system allows submitters to request color certification online, follow their submissions through the process, and obtain information on account status. The system sends back the certification results electronically, allowing submitters to sell their certified color before receiving hardcopy certificates. Any delays in the system result only from shipment of color additive samples to FDA's Office of Cosmetics and Colors for analysis.

Dated: June 9, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–12328 Filed 6–13–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–E–2370]

Determination of Regulatory Review Period for Purposes of Patent Extension; HETLIOZ

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for HETLIOZ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by August 14, 2017. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 11, 2017. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows: Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 14, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of August 14, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–E–2370 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; HETLIOZ.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product HETLIOZ (tasimelteon). HETLIOZ is indicated for treatment of Non-24-Hour Sleep-Wake Disorder. Subsequent to this approval, the USPTO received a patent term restoration application for HETLIOZ (U.S. Patent No. 5,856,529) from Vanda Pharmaceuticals, Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 20, 2015, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of HETLIOZ represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for HETLIOZ is 5,802 days. Of this time, 5,556 days occurred during the testing phase of the regulatory review period, while 246 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* March 16, 1998. FDA has verified the Vanda Pharmaceuticals, Inc. claim that March 16, 1998, is the date the investigational new drug application (IND) became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* May 31, 2013. FDA has verified the applicant's claim that the new drug application (NDA) for HETLIOZ (NDA 205677) was initially submitted on May 31, 2013.

3. *The date the application was approved:* January 31, 2014. FDA has verified the applicant's claim that NDA 205677 was approved on January 31, 2014.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **ADDRESSES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration,

5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 9, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–12323 Filed 6–13–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0016]

Agency Information Collection Activities; Proposed Collection; Comment Request; Recordkeeping and Records Access Requirements for Food Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of our recordkeeping and records access requirements for food facilities.

DATES: Submit either electronic or written comments on the collection of information by August 14, 2017.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 14, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of August 14, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov/.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov/* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov/.* If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2011–N–0016 for ''Recordkeeping and Records Access Requirements for Food Facilities.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov/* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov/.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov/* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Recordkeeping and Records Access Requirements for Food Facilities—21 CFR 1.337, 1.345, and 1.352

OMB Control Number 0910–0560—Extension

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) added section 414 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 350c), which requires that persons who manufacture, process, pack, hold, receive, distribute, transport, or import food in the United States establish and maintain records identifying the immediate previous sources and immediate subsequent recipients of food. Sections 1.326 through 1.363 of our regulations (21 CFR 1.326 through 1.363) set forth the requirements for recordkeeping and records access. The requirement to establish and maintain records improves our ability to respond to, and further contain, threats of serious adverse health consequences or death to humans or animals from accidental or deliberate contamination of food.

Information maintained under these regulations will help us identify and locate quickly contaminated or potentially contaminated food and inform the appropriate individuals and food facilities of specific terrorist threats. Our regulations require that records for non-transporters include the name and full contact information of sources, recipients, and transporters; an adequate description of the food, including the quantity and packaging; and the receipt and shipping dates (§§ 1.337 and 1.345). Required records for transporters include the names of consignor and consignee, points of origin and destination, date of shipment, number of packages, description of freight, route of movement and name of each carrier participating in the transportation, and transfer points through which shipment moved (§ 1.352). Existing records may be used if they contain all of the required information and are retained for the required time period.

Section 101 of the FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353) amended section 414(a) of the FD&C Act and expanded our access to records. Specifically, FSMA expanded our access to records beyond records relating to the specific suspect article of food to records relating to any other article of food that we reasonably believe is likely to be affected in a similar manner. In addition, we can access records if we believe that there is a reasonable probability that the use of or exposure to an article of food, and any other article of food that we reasonably believe is likely to be affected in a similar manner, will cause serious adverse health consequences or death to humans or animals. To gain access to these records, our officer or employee must present appropriate credentials and a written notice, at reasonable times and within reasonable limits and in a reasonable manner.

On February 23, 2012, we issued an interim final rule in the **Federal Register** (77 FR 10658) (the 2012 IFR) amending § 1.361 to be consistent with the current statutory language in section 414(a) of the FD&C Act, as amended by section 101 of FSMA. In the 2012 IFR, we concluded that the information collection provisions of § 1.361 were exempt from OMB review under 44 U.S.C. 3518(c)(1)(B)(ii) and 5 CFR 1320.4(a)(2) as collections of information obtained during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities (77 FR 10658 at 10661). The regulations at 5 CFR 1320.3(c) provide that the exception in 5 CFR 1320.4(a)(2) applies during the entire course of the investigation, audit, or action, but only after a case file or equivalent is opened with respect to a particular party. Such a case file would be opened as part of the request to access records under § 1.361. Accordingly, we have not included an estimate of burden hours associated with § 1.361 in table 1.

Description of Respondents: Persons that manufacture, process, pack, hold, receive, distribute, transport, or import food in the United States are required to establish and maintain records, including persons that engage in both interstate and intrastate commerce.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
1.337, 1.345, and 1.352 (Records maintenance)	379,493	1	379,493	13.228	5,020,000
1.337, 1.345, and 1.352 (Learning for new firms)	18,975	1	18,975	4.790	90,890
Total					5,110,890

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on our estimate of the number of facilities affected by the final rule entitled ''Establishment and Maintenance of Records Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002,'' published in the **Federal Register** of December 9, 2004 (69 FR 71562 at 71650). With regard to records maintenance, we estimate that approximately 379,493 facilities will spend 13.228 hours collecting, recording, and checking for accuracy of the limited amount of additional information required by the regulations, for a total of 5,020,000 hours annually. In addition, we estimate that new firms entering the affected businesses will incur a burden from learning the regulatory requirements and understanding the records required for compliance. In this regard, we estimate the number of new firms entering the affected businesses to be 5 percent of

379,493, or 18,975 firms. Thus, we estimate that approximately 18,975 facilities will spend 4.790 hours learning about the recordkeeping and records access requirements, for a total of 90,890 hours annually. We estimate that approximately the same number of firms (18,975) will exit the affected businesses in any given year, resulting in no growth in the number of total firms reported on line 1 of table 1. Therefore, the total annual recordkeeping burden is estimated to be 5,110,890 hours.

Dated: June 9, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–12327 Filed 6–13–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–2463]

Request for Nominations on Device Good Manufacturing Practice Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any industry organization interested in participating in the selection of a nonvoting industry representative to serve on the Device Good Manufacturing Practice Advisory Committee (DGMPAC) in the Center for Devices and Radiological Health notify FDA in writing. FDA is also requesting nominations for a nonvoting industry representative to serve on DGMPAC. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for the upcoming vacancy effective with this notice.

DATES: Any industry organizations interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to FDA by July 14, 2017 (see sections I and III of this document for further details). Concurrently, nomination materials for prospective candidates should be sent to FDA by July 14, 2017.

ADDRESSES: All statements of interest from industry organizations interested in participating in the selection process of nonvoting industry representative nominations should be sent to Margaret Ames (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives should be submitted electronically by accessing FDA's Advisory Committee Membership Nomination Portal at *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's Web site at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Margaret Ames, Office of Management, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5264, Silver Spring, MD 20993, 301–796–5960, FAX: 301–847–8505, email: *margaret.ames@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 520 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 360j), as amended, provides that DGMPAC shall be composed of two representatives of interests of the device manufacturing industry. The Agency is requesting nominations for a nonvoting industry representative on DGMPAC. FDA is publishing a separate document announcing the request for notification for voting members on DGMPAC.

I. Function of DGMPAC

DGMPAC reviews proposed regulations issuance regarding good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packaging, storage, installation, and servicing of devices, and makes recommendations regarding the feasibility and reasonableness of those proposed regulations. The committee also reviews and makes recommendations on proposed guidelines developed to assist the medical device industry in meeting the good manufacturing practice requirements, and provides advice with regard to any petition submitted by a manufacturer for an exemption or variance from good manufacturing practice regulations.

II. Qualifications

Persons nominated for DGMPAC should possess appropriate qualifications to understand and contribute to the committee's work as described in the committee's function.

III. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations, and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for the committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within the 60 days, the Commissioner of Food and Drugs will select the nonvoting member to represent industry interests.

IV. Application Procedure

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Contact information, a current curriculum vitae, and the name of the committee of interest should be sent to the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**) within 30 days of publication of this document (see **DATES**). FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process).

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups. Specifically, in this document, nominations for nonvoting representatives of industry interests are encouraged from the device manufacturing industry.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: June 9, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–12326 Filed 6–13–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–0001]

Request for Nominations of Voting Members on a Public Advisory Committee; National Mammography Quality Assurance Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the National Mammography Quality Assurance Advisory Committee in the Center for Devices and Radiological Health. FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Nominations received on or before August 14, 2017, will be given first consideration for membership on the National Mammography Quality Assurance Advisory Committee. Nominations received after August 14, 2017, will be considered for nomination to the committee as later vacancies occur.

ADDRESSES: All nominations for membership should be submitted electronically by logging into the FDA Advisory Nomination Portal: *http://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Regarding all nomination questions for membership: Sara Anderson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G616, Silver Spring, MD 20993, 301–796–7047, email: *Sara.Anderson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting members on the National Mammography Quality Assurance Advisory Committee.

I. General Description of the Committee Duties

The National Mammography Quality Assurance Advisory Committee advises the Commissioner of Food and Drugs (the Commissioner) or designee on: (1) Developing appropriate quality standards and regulations for mammography facilities; (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program; (3) developing regulations with respect to sanctions; (4) developing procedures for monitoring compliance with standards; (5) establishing a mechanism to investigate consumer complaints; (6) reporting new developments concerning breast imaging that should be considered in the oversight of mammography facilities; (7) determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas; (8) determining whether there will exist a sufficient number of medical physicists after October 1, 1999; and (9) determining the costs and benefits of compliance with these requirements.

II. Criteria for Voting Members

The committee consists of a core of 15 members, including the Chair. Members and the Chair are selected by the Commissioner or designee from among physicians, practitioners, and other health professionals, whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography. Almost all non-Federal members of this committee serve as Special Government Employees. Members will be invited to serve for terms of up to 4 years.

III. Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the advisory committee. Self-nominations are also accepted. Nominations must include a current, complete resume or curriculum vitae for each nominee, including current business address and/or home address, telephone number, and email address if available. Nominations must specify the advisory committee for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters related to financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: June 9, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–12312 Filed 6–13–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2015–E–0635; FDA–2015–E–0634; FDA–2015–E–0629]

Determination of Regulatory Review Period for Purposes of Patent Extension; NEUROPACE RNS SYSTEM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for NEUROPACE RNS SYSTEM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by August 14, 2017. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 11, 2017. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be

considered. Electronic comments must be submitted on or before August 14, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of August 14, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2015–E–0635, FDA–2015–E–0634, and FDA–2015–E–0629 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; NEUROPACE RNS SYSTEM.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the dockets and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device NEUROPACE RNS SYSTEM. NEUROPACE RNS SYSTEM is indicated as an adjunctive therapy in reducing the frequency of seizures in individuals 18 years of age or older with partial onset seizures who have undergone diagnostic testing that localized no more than 2 epileptogenic foci, are refractory to two or more antiepileptic medications, and currently have frequent and disabling seizures (motor partial seizures, complex partial seizures, and/or secondarily generalized seizures). Subsequent to this approval, the USPTO received patent term restoration applications for NEUROPACE RNS SYSTEM (U.S. Patent Nos. 6,016,449; 6,360,122; and 6,810,285) from NeuroPace, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated November 2, 2015, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of NEUROPACE RNS SYSTEM represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for NEUROPACE RNS SYSTEM is 3,796 days. Of this time, 2,694 days occurred during the testing phase of the regulatory review period, while 1102 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* June 26, 2003. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective was June 26, 2003.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* November 9, 2010. FDA has verified the applicant's claim that the premarket approval application (PMA) for NEUROPACE RNS SYSTEM (PMA P100026) was initially submitted November 9, 2010.

3. *The date the application was approved:* November 14, 2013. FDA has verified the applicant's claim that PMA P100026 was approved on November 14, 2013.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, the applicant seeks 5 years of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES** and **ADDRESSES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 9, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–12322 Filed 6–13–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–0558]

Agency Information Collection Activities; Proposed Collection; Comment Request; Disclosures in Professional and Consumer Prescription Drug Promotion

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on research entitled, ''Disclosures in Professional and Consumer Prescription Drug Promotion.''

DATES: Submit either electronic or written comments on the collection of information by August 14, 2017.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 14, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of August 14, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–0558 for ''Disclosures in Professional and Consumer Prescription Drug Promotion.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information

redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jonnalynn Capezzuto, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Disclosures in Professional and Consumer Prescription Drug Promotion—OMB Control Number 0910—NEW

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes the FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 393(b)(2)(c)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

FDA regulates prescription drug promotion directed to healthcare professionals (HCPs) and consumers (section 502(n) of the FD&C Act (21 U.S.C. 352(n)). In the course of promoting their products, pharmaceutical sponsors (sponsors) may present a variety of information including the indication, details about the administration of the product, efficacy information, and clinical trial data. In an effort to present often complicated information concisely, sponsors may not include relevant information in the body of the text or visual display of the claim. Additionally, sponsors may not always present limitations to the claim in the main body of the text or display. In these cases, sponsors typically include disclosures of information somewhere in the promotional piece.

There is little or no published research on disclosures in prescription drug promotion, either directed to consumers or to HCPs. Previous research on the effectiveness of disclosures has been conducted primarily in the dietary supplement arena (Refs. 1–4). Thus, the proposed research will examine the effectiveness of clear and conspicuous disclosures in prescription drug promotion directed to both of these populations. The purpose of our study is to determine how useful disclosures regarding prescription drug information are when presented prominently and adjacent to claims.[1] Specifically, are HCPs and consumers able to use disclosures to effectively frame information in efficacy claims in prescription drug promotion?

To address this research question, we have designed a set of studies that cover both consumers and HCPs, as well as three different types of claims: Scope of treatment, ease of use, and statistical significance (see table 1). The scope of treatment claim can be thought of as a disease-awareness claim; that is, a broader discussion of a medical condition that may include disease characteristics beyond what the promoted drug has been shown to treat, followed by a disclosure of this nature. The ease of use claim is a simple claim of easy drug administration that omits specific important details that contribute to a more difficult drug administration than suggested. Finally, the statistical significance claim will be

[1] The Federal Trade Commission (FTC), which regulates the advertising of non-prescription drug products as well as other non-FDA regulated products (*e.g.,* package goods, cars, etc.), issued a specific position on disclosures (Ref. 5) for the advertising it regulates. Specifically, FTC explains that disclosures must be ''clear and conspicuous''; in other words, in understandable language, located near the claim to be further clarified, and not hidden or minimized by small font or other distractions.

one in which the disclosure reveals that the presented analyses were not statistically significant, and thus must be viewed with considerable caution.

TABLE 1—IDENTICAL STUDY DESIGNS FOR SAMPLES OF HCPS AND CONSUMERS

Type of claim	Level of disclosure		
	Weak	Strong	Control
Study A: HCPs			
Scope of Treatment	Evidence Only	Evidence + Conclusion	None.
Ease of Use	Evidence Only	Evidence + Conclusion	None.
Statistical Significance	Evidence Only	Evidence + Conclusion	None.
Study B: Consumers			
Scope of Treatment	Evidence Only	Evidence + Conclusion	None.
Ease of Use	Evidence Only	Evidence + Conclusion	None.
Statistical Significance	Evidence Only	Evidence + Conclusion	None.

Each participant will view three different mock promotional print pieces for different prescription drug products. For each of the three promotional pieces, they will be randomized to see an ad with a weak disclosure, a strong disclosure, or no disclosure. We will manipulate the strength of disclosure by including additional concluding information (strong) or not (weak) in the disclosure statement. In all cases, disclosures will be adjacent to claims and written in font clear enough to be detected.

Technically speaking, these designs can be viewed as 3 within-subjects 1 × 3 designs with level of disclosure as a between subject factor. In other words, we will analyze the results of the scope of treatment disclosures independently of the ease of use disclosures and statistical significance disclosures, even though each participant will see one of each. The claims and disclosures are different enough that practice effects should be moderated, but we will counterbalance the order of ads shown to minimize potential bias.

Because promotional pieces intended for HCPs and consumers have different levels of complexity and medical depth, and because the amount of knowledge expected between the two groups differs, the studies will use separate mock promotional pieces and ask slightly different comprehension questions of each group. We will maintain as much similarity across groups as possible for descriptive comparisons.

Both consumers and HCPs will be recruited from Internet panels. Because promotional pieces will represent three different medical conditions, we will obtain a general population sample of consumers and a HCP sample of primary care physicians. Eligible participants who agree to participate will view mock promotional pieces and answer questions about their comprehension of the main messages in the promotion, perceptions of the product, attention to disclosures and intention to ask a HCP about it (consumers) or to prescribe the product (HCPs). Questionnaires are available upon request.

Pretests will be conducted before conducting the main studies in order to ensure the mock promotional pieces are realistic and that the questionnaire flows well and questions are reasonable. We will supplement the findings of the pretests with two small eye-tracking studies. Researchers use eye-tracking technology to capture viewing behavior that is independent of self-report. The technology measures where and for how long participants glanced at or examined particular parts of a display. It has been used in studies of consumer print advertising (Refs. 6–8) and Internet promotion (Refs. 9–10). To our knowledge, there is little or no published research using eye-tracking technology with HCPs.

We will use these small eye-tracking studies to determine what parts of each promotional piece consumers and HCPs actually viewed. Specifically, we will be able to determine whether they looked at the disclosure statement at all, and we can obtain a rough idea of how long they looked at it. This data will complement the self-reported items on the questionnaire. Moreover, we will use this data, as well as the pretest data, to improve the main studies. For this part of the study, 20 consumers and 20 HCPs will view the promotional pieces.

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity [1]	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [2]
Consumers					
Pretest Screener	833	1	833	.03 (2 min.)	25
Pretest	500	1	500	0.33 (20 min.)	165
Eye-Tracking Screener	80	1	80	.08 (5 min.)	7
Eye-Tracking Study	20	1	20	1	20
Main Study Screener	2,500	1	2,500	.03 (2 min.)	75
Main Study	1,500	1	1,500	0.33 (20 min.)	495
HCPs					
Pretest Screener	735	1	735	.03 (2 min.)	22

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Activity [1]	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [2]
Pretest	500	1	500	0.33 (20 min.)	165
Eye-Tracking Screener	80	1	80	.08 (5 min.)	7
Eye-Tracking Study	20	1	20	1	20
Main Study Screener	2,206	1	2,206	.03 (2 min.)	67
Main Study	1,500	1	1,500	0.33 (20 min.)	495
Total					1,563

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Rounded to the next full hour.

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6. Higgins, E., M. Leinenger, and K. Rayner. ''Eye Movements When Viewing Advertisements.'' *Frontiers in Psychology,* 5, 210. (2014).
7. Pieters, R., M. Wedel, and R. Batra. ''The Stopping Power of Advertising: Measures and Effects of Visual Complexity.'' *Journal of Marketing,* 74(5), 48–60. (2010).
8. Thomsen, S. and K. Fulton. ''Adolescents' Attention to Responsibility Messages in Magazine Alcohol Advertisements: An Eye-Tracking Approach.'' *Journal of Adolescent Health,* 41, 27–34. (2007).
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10. Wedel, M. and R. Pieters. ''A Review of Eye-Tracking Research in Marketing.'' In *Review of Marketing Research, Vol. 4* (pp. 123–147), N.K. Malhotra (Ed.). Armonk, New York: M.E. Sharpe. (2008).

Dated: June 9, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–12329 Filed 6–13–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–2903]

Data and Methods for Evaluating the Impact of Opioid Formulations With Properties Designed To Deter Abuse in the Postmarket Setting: A Scientific Discussion of Present and Future Capabilities; Public Workshop; Issues Paper; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing a public workshop entitled ''Data and Methods for Evaluating the Impact of Opioid Formulations with Properties Designed to Deter Abuse in the Postmarket Setting: A Scientific Discussion of Present and Future Capabilities.'' The purpose of the public workshop is to host a scientific discussion with expert panel members and interested stakeholders about the challenges in using the currently available data and methods for assessing the impact of opioid formulations with properties designed to deter abuse on opioid misuse, abuse, addiction, overdose, and death in the postmarket setting. The goal of this meeting is to discuss ways to improve the analysis and interpretation of existing data, as well as to discuss opportunities and challenges for collecting and/or linking additional data to improve national surveillance and research capabilities in this area. To assist in the workshop discussion, FDA is making available an issues paper that provides a brief overview of the currently available data resources used for evaluating the impact of opioid formulations with properties designed to deter abuse; summarizes some of the key methodological issues in this area; and outlines the issues that we would like to discuss during the upcoming workshop, including enhancing existing resources, applying new methodology, and creating new resources.

DATES: The public workshop will be held on July 10 and 11, 2017, from 8:30 a.m. to 5 p.m. Submit either electronic or written comments on this public workshop by September 11, 2017. Late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 11, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of September 11, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at the Sheraton Silver Spring Hotel, 8777 Georgia Ave., Silver Spring, MD 20910. The hotel's phone number is 301–589–0800.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your

comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–2093 for ''Data and Methods for Evaluating the Impact of Opioid Formulations with Properties Designed to Deter Abuse Properties in the Postmarket Setting: A Scientific Discussion of Present and Future Capabilities; Public Workshop; Issues Paper; Request for Comments.'' Received comments, those filed in a timely manner (see **DATES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Cynthia Kornegay, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2456, Silver Spring, MD, 20993–0002, 301–796–0187, *Cynthia.Kornegay@fda.hhs.gov;* or Cherice Holloway, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4466, Silver Spring, MD, 20993–0002, 301–796–4909, *Cherice.Holloway@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In this 2-day public workshop, FDA plans to host a scientific discussion with expert panel members and interested stakeholders about the challenges in using the currently available data and methods for assessing the impact of opioid formulations with properties designed to deter abuse on opioid misuse, abuse, addiction, overdose, and death in the postmarket setting. The goal of this meeting is to discuss ways to improve the analysis and interpretation of existing data, as well as to discuss opportunities and challenges for collecting and/or linking additional data to improve national surveillance and research capabilities in this area.

II. Topics for Discussion at the Public Workshop

FDA has developed an issues paper entitled ''Data and Methods for Evaluating the Impact of Opioid Formulations with Properties Designed to Deter Abuse in the Postmarket Setting.'' This issues paper (1) provides a brief overview of the currently available data resources used for evaluating opioid formulations with properties designed to deter abuse; (2) summarizes some of the key methodological issues in this area; and (3) outlines the issues we would like to discuss during the upcoming workshop, including modifying existing resources, applying new methodology, and creating new resources. The issues paper can be found on the Internet at *https://www.fda.gov/Drugs/NewsEvents/ucm540845.htm.*

III. Participating in the Public Workshop

Registration: To register to attend the public workshop, ''Data and Methods for Evaluating the Impact of Opioid Formulations with Properties Designed to Deter Abuse in the Postmarket Setting: A Scientific Discussion of Present and Future Capabilities,'' in person or virtually via Webcast, please contact Cherice Holloway at *cherice.holloway@fda.hhs.gov* by June 26, 2017. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public workshop must register by June 26, 2017. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when they have been accepted. If time and space permit, onsite registration on the day of the public meeting/public workshop will be provided beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Cherice Holloway at *cherice.holloway@fda.hhs.gov* no later than Friday, June 30, 2017.

Public Participation in Scientific Workshop: Time will be provided during the discussion of each agenda topic for audience participants to provide comments if desired. Comments should be specific to the discussion topic, and the time provided will be at the discretion of the session chair.

Streaming Webcast of the Public Workshop: This public workshop will

also be Webcast. Additional information about accessing the Webcast will be made available at least 2 days prior to the public workshop at: *https://www.fda.gov/Drugs/NewsEvents/ucm540845.htm.*

Transcripts: Please be advised that as soon as a transcript of the public workshop is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see **ADDRESSES**). A link to the transcript will also be available on the Internet at *https://www.fda.gov/Drugs/NewsEvents/ucm540845.htm.*

Dated: June 9, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–12299 Filed 6–13–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Career Development Program to Promote Diversity in Health Research.

Date: July 6, 2017.

Time: 8:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Lindsay Marie Garvin, Ph.D., Scientific Review Officer, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Suite 7189, Bethesda, MD 20892, 301–827–7911, *lindsay.garvin@nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Biorepository: Scientific Opportunities for Exploratory Research (R21).

Date: July 7, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: William J. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–827–7938, *johnsonwj@nhlbi.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Short-Term Research Education to Increase Diversity.

Date: July 7, 2017.

Time: 8:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Lindsay Marie Garvin, Ph.D., Scientific Review Officer, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Suite 7189, Bethesda, MD 20892, 301–827–7911, *lindsay.garvin@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 8, 2017.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–12239 Filed 6–13–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; P30 Core Centers for Clinical Research.

Date: June 29–30, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Kan Ma, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 814, Bethesda, MD 20892, 301–451–4838, *mak2@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 8, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–12240 Filed 6–13–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Training Grants Review.

Date: June 20, 2017.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 824, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Yin Liu, Ph.D., MD, Scientific Review Officer, Scientific Review Branch, National Institute of Health/NIAMS, 6701 Democracy Blvd., Suite 824, Bethesda, MD 20892, 301–594–4952, *liuy@exchange.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis,

Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 8, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–12241 Filed 6–13–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

New Date for the October 2017 Customs Broker's License Examination

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

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection has changed the date on which the semi-annual examination for an individual broker's license will be held in October 2017.

DATES: The customs broker's license examination scheduled for October 2017 will be held on Wednesday, October 25, 2017.

FOR FURTHER INFORMATION CONTACT: Neila Venne, Broker Management Branch, Office of Trade, (843) 579–6407, *Neila.M.Venne@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person (an individual, corporation, association, or partnership) must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of broker's licenses and permits, and provides for the taking of disciplinary action against brokers that have engaged in specified types of infractions. This section also provides that an examination may be conducted to assess an applicant's qualifications for a license.

The regulations issued under the authority of section 641 are set forth in Title 19 of the Code of Federal Regulations, part 111 (19 CFR 111). Part 111 sets forth the regulations regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers. These regulations also include the qualifications required of applicants and the procedures for applying for licenses and permits. Section 111.11 of the CBP Regulations (19 CFR 111.11) sets forth the basic requirements for a broker's license and in paragraph (a)(4) of that section provides that an applicant for an individual broker's license must attain a passing grade (75 percent or higher) on a written examination.

Section 111.13 of the CBP Regulations (19 CFR 111.13) sets forth the requirements and procedures for the written examination for an individual broker's license and states that written customs broker license examinations will be given on the first Monday in April and October unless the regularly scheduled examination date conflicts with a national holiday, religious observance, or other foreseeable event.

To avoid concerns related to the commencement of the federal government's 2018 fiscal year, CBP has decided to change the regularly scheduled date of the examination. This document announces that CBP has scheduled the October 2017 customs broker's license examination for Wednesday, October 25, 2017.

Dated: June 7, 2017.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade, U.S. Customs and Border Protection.

[FR Doc. 2017–12311 Filed 6–13–17; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2017–0019]

Privacy Act of 1974; System of Records

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Notice of modified Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to modify and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/ALL–025 Law Enforcement Authority in Support of the Protection of Property Owned, Occupied, or Secured by the Department of Homeland Security System of Records.'' This system of records allows the Department of Homeland Security to collect and maintain records on the results of law enforcement activities in support of the protection of property owned, occupied, or secured by the Department of Homeland Security and its Components, including the Federal Protective Service, and individuals maintaining a presence or access to such property. The Department of Homeland Security is updating this system of records notice to, among other things, (1) modify the category of individuals, (2) modify the category of records, (3) modify two existing routine uses, and (4) add a new routine use. The Department of Homeland Security is also issuing a Notice of Proposed Rulemaking to add a new exemption from certain provisions of the Privacy Act, elsewhere in the **Federal Register**. This new exemption is needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the additional exemptions are required to preclude subjects of these activities from frustrating ongoing operations; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS's ability to obtain information from third parties and other sources; to protect the privacy of third parties; and to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension. The existing Privacy Act exemptions for this system of records continue to apply to it. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

This system of records notice does not apply to the facilities and perimeters secured by the U.S. Secret Service. Records pertaining to perimeters and facilities secured by the U.S. Secret Service, other than those records subject to the Presidential Records Act, are covered under Department of Homeland Security/U.S. Secret Service-004 Protection Information System of Records, 76 FR 66940, October 28, 2011.

This modified system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before July 14, 2017. This modified system will be effective July 14, 2017.

ADDRESSES: You may submit comments, identified by docket number DHS–2017–0019 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office,

Department of Homeland Security, Washington, DC 20528–0655.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Jonathan R. Cantor (202) 343–1717, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) proposes to modify and reissue a current DHS system of records titled, ''DHS/ALL–025 Law Enforcement Authority in Support of the Protection of Property Owned, Occupied, or Secured by DHS System of Records.''

The DHS/ALL–025 Law Enforcement Authority in Support of the Protection of Property Owned, Occupied, or Secured by DHS System of Records covers the collection, use, maintenance, and dissemination of records relating to the protection of property owned, occupied, or secured by DHS. DHS is updating this system of records notice to, among other things, (1) expand the category of individuals to include persons involved in any event, and any witnesses to such event, that affects or impacts the safety, security, or protection of the property, facility, or occupant; (2) remove applicants and contractors who have or had access to classified information as a category of individuals and associated categories of records relating to personnel security because that information has existing coverage under DHS/ALL–023 Department of Homeland Security Personnel Security Management System of Records; (3) add Closed-circuit television (CCTV) recording and audio recordings as categories of records; (4) add Alien File Numbers, also known as an individual's A-Number as a category of records; (5) modify routine use ''E'' to be in conformity with Office of Management and Budget Memorandum M–17–12; (6) modify routine use ''F'' to specifically include Federal Protective Service guards and (7) add a new routine use ''M,'' which will permit DHS to share information with individuals involved in incidents occurring on federal facilities, their insurance companies, and their attorneys for the purpose of adjudicating a claim. This notice also includes non-substantive changes to simplify the formatting and text of the previously published notice. In addition to the existing Privacy Act exemptions that continue to apply to this system of records, DHS is issuing a Notice of Proposed Rulemaking to add a new exemption from certain provisions of the Privacy Act. This system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, and similarly, the Judicial Redress Act (JRA) provides a statutory right to covered persons to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/ALL–025 Law Enforcement Authorities in Support of the Protection of Property Owned, Occupied, or Secured by DHS Security Systems of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Homeland Security (DHS)/ALL–025 Law Enforcement Authorities in Support of the Protection of Property Owned, Occupied, or Secured by the Department of Homeland Security System of Records.

SECURITY CLASSIFICATION:

Unclassified, sensitive, for official use only, and classified.

SYSTEM LOCATION:

Records are maintained at several DHS Headquarters locations and Component offices, in both Washington, DC and field locations.

SYSTEM MANAGER(S):

For Headquarters components of DHS: Chief, Physical Security Division (202) 447–5010, Office of Security, Department of Homeland Security, Washington, DC 20528. For DHS Components, the System Manager can be found at *http://www.dhs.gov/foia* under ''FOIA Contact Information.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C 1315; 44 U.S.C. 3101; and E.O. 9397 as amended by E.O. 13478; E.O. 10450; E.O. 12968, 5 CFR 731; 5 CFR 732; 5 CFR 736; 32 CFR 147; and DCID 6/4.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to maintain and record the results of law enforcement activities in support of the protection of property owned, occupied, or secured by DHS and its components, including the Federal Protective Service (FPS), and individuals maintaining a presence or access to such property. It will also be used to pursue criminal prosecution or civil penalty action against individuals or entities suspected of offenses that may have been committed against property owned, occupied, or secured by DHS or persons on the property.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include:

- Individuals or entities involved in, or suspected of being involved in, criminal acts against the buildings, grounds, and property that are owned, occupied, or secured by DHS or against persons who are in or on such buildings, grounds, or property. This category includes property located within or outside of the United States;
- Individuals who provide information that is relevant to the investigation, such as victims and witnesses, and who report such crimes or acts;
- Persons involved in any event, or witnesses an event that affects or impacts the safety, security, or protection of the property, facility, or occupant;
- Current, former, or retired DHS personnel who travel outside the United States while employed by DHS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system may include:

- Individual's or entity's name;
- Alias;
- Digital video recordings and CCTV recordings;
- Audio recordings;
- Date of birth, place of birth, and age;
- Social Security number;
- Alien File Number (A-Number);
- Duty/work address and telephone number;
- Race and ethnicity;

- Citizenship;
- Sex;
- Marital status;
- Identifying marks (*e.g.,* tattoos, scars);
- Height and weight;
- Eye and hair color;
- Biometric data (*e.g.,* photograph, fingerprints);
- Home address, telephone number, and other contact information;
- Driver's license information and citations issued;
- Vehicle information;
- Date, location, nature and details of the incident/offense;
- Alcohol, drugs, or weapons involvement;
- Bias against any particular group;
- Confinement information to include location of correctional facility;
- Gang/cult affiliation, if applicable;
- Release/parole/clemency eligibility dates;
- Foreign travel notices and reports including briefings and debriefings;
- Notices and reports with foreign contacts;
- Reports of investigation;
- Statements of individuals, affidavits, and correspondence;
- Documentation pertaining to criminal activities;
- Investigative surveys;
- Certifications pertaining to qualifications for employment, including but not limited to education, firearms, first aid, and CPR;
- Technical, forensic, polygraph, and other investigative support to criminal investigations to include source control documentation and regional information;
- Data on individuals to include: Victims, witnesses, complainants, offenders, and suspects;
- Records of possible espionage, foreign intelligence service elicitation activities, and terrorist collection efforts directed at the Department or its staff, contractors, or visitors;
- Records of close coordination with the intelligence and law enforcement community.

RECORD SOURCE CATEGORIES:

Records are obtained from sources contacted during investigations; state, tribal, international, and local law enforcement; and federal departments and agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS determines that the use of information from this system of records is reasonably necessary and otherwise compatible with the purpose of collection to assist another federal recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach; or

2. DHS suspects or has confirmed that there has been a breach of this system of records; and (a) DHS has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, harm to DHS (including its information systems, programs, and operations), the Federal Government, or national security; and (b) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, FPS Contract Guard companies, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To an appropriate federal, state, local, tribal, foreign, or international agency or contract provider, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee or contractor, the issuance of a security clearance, the reporting of an investigation of an employee or contractor, the letting of a contract, or the issuance of a license, grant, or other benefit, and disclosure is appropriate to the proper performance of the official duties of the person making the request.

I. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or pursuant to the order of a court of competent jurisdiction.

J. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

K. To a federal, state, local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to provide intelligence, counterintelligence, or other information for the purposes of intelligence, counterintelligence, or antiterrorism activities authorized by United States law, E.O., or other applicable national security directive.

L. To a public or professional licensing organization when such information indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

M. To individuals involved in incidents occurring on federal facilities, their insurance companies, and their attorneys for the purpose of adjudicating a claim, such as personal injury, traffic accident, or other damage to property. The release of personal information is limited to that required to adjudicate a claim.

N. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by individual name, Social Security number, or other personal identifier listed in ''Categories of Records,'' when applicable.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are pending National Archives and Records Administration approval. DHS has proposed the following retention schedule: Records are maintained in accordance with N1–563–08–4, Item 1. Records are maintained for 20 years after the end of the fiscal year in which the case was closed and are then destroyed. No records will be destroyed until the retention schedule is approved.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act, and those of the JRA if applicable, because it is a law enforcement system. However, DHS will consider individual requests to determine whether or not information may be released. Thus, individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and Headquarters or component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contacts Information.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, Washington, DC 20528–0655. Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about you may be available under the Freedom of Information Act.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If your request is seeking records pertaining to another living individual, you must, in accordance with 6 CFR 5.21, include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered JRA records, see ''access procedures'' above.

NOTIFICATION PROCEDURES:

See ''Record Access procedure.''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8); (f); (g)(1). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), has exempted this system from the following provisions of the Privacy Act: (c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); (f). When this system receives a record from another system exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

HISTORY:

75 FR 5614; 74 FR 2903.

Dated: June 8, 2017.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2017–12262 Filed 6–13–17; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/A0A501010.999900]

Draft Programmatic Environmental Impact Statement for the 2015 Integrated Resource Management Plan for the Colville Indian Reservation, Nespelem, Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the Confederated Tribes of the Colville Reservation (Tribes) and the United States Environmental Protection Agency (EPA) serving as cooperating agencies, has prepared a Draft Programmatic Environmental Impact Statement (DEIS) for the 2015 Colville Reservation Integrated Resource Management Plan (IRMP). This notice announces that the DEIS is now available for public review.

DATES: Any comments on the DEIS must arrive on or before the date 45 days after the EPA publishes a Notice of Availability of the DEIS in the **Federal Register**.

ADDRESSES: The DEIS is available for public review online at *http://www.colvilletribes.com/irmp* and in hard copy at the following locations:

- Omak Public Library, 30 S Ash St., Omak, Washington 98841
- Omak Senior Meal Site, 511 E. Benton Street, Omak, Washington 98841
- Nespelem Resource Center, 12 Lakes St., Nespelem, Washington 99155
- Nespelem Senior Meal site, 322 10th Street, Nespelem, Washington 99155
- Keller Resource Center, 11673 S. Hwy 21, Keller, Washington 99140
- Keller Senior Meal Site, 7 Jim James Road, Keller, Washington 99140
- Inchelium Resource Center, 12 Community Center Loop, Inchelium, Washington 99138
- Inchelium Senior Meal Site, 16 Shortcut Road, Inchelium, Washington 99138

You may mail or hand-deliver written comments to Mr. Stanley Speaks, Northwest Regional Director, Bureau of Indian Affairs, 911 Northeast 11th Avenue Portland, Oregon 97232–4169. You may also mail comments to BIA Colville Agency Superintendent Debra Wulff, P.O. Box 111, Nespelem, Washington 99155–0111 or hand deliver to the Superintendent's office at 10 Nez Perce Street, Nespelem, Washington. You can also submit comments by email to: *debra.wulff@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Debra Wulff, Superintendent, Bureau of Indian Affairs, Colville Agency, P.O. Box 111, Nespelem, Washington 99155–0111, (509) 634–2316.

SUPPLEMENTARY INFORMATION: The Tribes have prepared an IRMP for the natural and cultural resources of the Colville Reservation. The plan updates the original IRMP that was prepared and implemented in 2000. The IRMP incorporates management goals and objectives for the commercial forest, rangeland and agricultural lands of the Reservation.

The Tribes' forest products industry, livestock grazing, and agriculture have the potential to impact the natural and human environments of the Reservation. The DEIS analyzes the potential impacts associated with these activities. These include impacts to land resources such as geology, minerals, and soils, watershed function, surface and groundwater resources, air quality, biological resources, cultural and paleontological resources, socioeconomic conditions, transportation and forest access roads, land use, public services, noise, aesthetics, recreation, climate change, cumulative effects, and indirect and growth inducing effects.

The DEIS considers five management alternatives developed by the Tribes' IRMP Core Team. The interdisciplinary team developed these management alternatives for consideration and analysis and designated a preferred alternative (Alternative 2) that was approved by the Colville Business Council in June 2014. The team also conducted a community survey in 2014 that asked community members to choose a preferred alternative. All groups were unanimous in selecting Alternative 2 as the preferred alternative. The alternatives are:

1. Continue the Current Management Strategy
2. Enhance and Improve the Current Management Strategy (Preferred Alternative)
3. Concentrate on Forest and Rangeland Health Problems
4. Expand Forest and Livestock Production
5. Eliminate Timber Harvesting and Livestock Grazing

A Notice of Intent (NOI) to prepare an EIS was released in the **Federal Register** on November 21, 2014. Public scoping meetings were held in four Reservation communities in October 2015 and a Scoping Meetings Report was released in March 2016. An administrative draft DEIS was prepared and reviewed by the IRMP Core Team and appropriate revisions were incorporated along with supplemental information.

Directions for submitting comments: Please include your name, return address, and the caption: ''DEIS Comments, Colville Reservation IRMP,'' on the first page of your written comments. If emailing comments, please use ''DEIS Comments, Colville Reservation IRMP,'' as the subject of your email.

Locations where the DEIS is available for review: The DEIS is available for review during regular business hours at the addresses noted above in the **ADDRESSES** section of this notice. The DEIS is also available online at *http://www.colvilletribes.com/irmp.*

To obtain a compact disc copy of the DEIS, please provide your name and address in writing or by voicemail to Debra Wulff, Bureau of Indian Affairs, at the address or phone number above in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual paper copies of the DEIS will be provided upon payment of applicable printing expenses by the requestor for the number of copies requested.

Public comment availability: Comments, including names and addresses of respondents, will be available for public review during regular business hours at the BIA mailing address shown in the **ADDRESSES** section of this notice. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published pursuant to Sec. 1503.1 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) and Sec. 46.305 of the Department of the Interior Regulations (43 CFR part 46), implementing the procedural requirements of the NEPA of l969, as amended (42 U.S.C. 4371, *et seq.*), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8. This notice is also published in accordance with federal general conformity regulations (40 CFR part 93).

Dated: May 15, 2017.

Michael S. Black,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2017–12288 Filed 6–13–17; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23337; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Field Museum of Natural History, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of sacred objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Field Museum of Natural History. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Field Museum of Natural History at the address in this notice by July 14, 2017.

ADDRESSES: Helen Robbins, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Field Museum of Natural History, Chicago, IL, that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In August of 1892, two cultural items were removed from the Quinault Indian Reservation in the State of Washington. Museum records indicate that these cultural items are Quinault in origin, and were collected by Reverend Myron Eells on behalf of the Washington World's Fair Commission for display at the World's Columbian Exposition. The two sacred objects are tamahnousing figures, and were accessioned by The Field Museum of Natural History in 1893. One sacred object is a red painted wooden anthropomorphic figure with rattles around its neck (cat. 19789). The figure represents the spirit djilo'tsanomic, who helped heal soul loss and would have been used by a shaman. The second sacred object is a cedar bark figure with attached rattles (cat. 19645). A similar figure is described by Ronald Olson as a ''doctor of the setting sun.'' According to Hilary Stewart, it would have been used in a Salmon Ceremony. Both figures are spirit helpers that would be used as tamahnousing items by practitioners of the traditional Quinault tamahnousing religion. They are ceremonial objects that are necessary today for the revitalization and present-day practice of Quinault traditional religion.

The Quinault are culturally affiliated with the area from which the sacred objects were removed. This assessment is supported by archival records and reports, museum records, Department of the Interior sources, academic sources, and correspondence with Quinault representatives.

Determinations Made by the Field Museum of Natural History

Officials of the Field Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the two cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and the Quinault Indian Nation (previously listed as the Quinault Tribe of the Quinault Reservation, Washington).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Helen Robbins, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org,* by July 14, 2017. After that date, if no additional claimants have come forward, transfer of control of the sacred objects to the Quinault Indian Nation (previously listed as the Quinault Tribe of the Quinault Reservation, Washington) may proceed.

The Field Museum of Natural History is responsible for notifying the Quinault Indian Nation (previously listed as the Quinault Tribe of the Quinault Reservation, Washington) that this notice has been published.

Dated: May 2, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–12292 Filed 6–13–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23373; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: San Bernardino County Sheriff-Coroner, San Bernardino, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The San Bernardino County Sheriff-Coroner has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the San Bernardino County Sheriff-Coroner. If no additional requestors come forward, the human remains may be reinterred.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the San Bernardino County Sheriff-Coroner at the address in this notice by July 14, 2017.

ADDRESSES: Robert Hunter, Diplomat—ABMDI, Unidentified Persons Coordinator, San Bernardino County

Sheriff-Coroner, 175 South Lena Road, San Bernardino, CA 92418, telephone (909) 387–2978.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the San Bernardino County Sheriff-Coroner, San Bernardino, CA. The human remains were removed from an unknown location.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the San Bernardino County Sheriff-Coroner professional staff in consultation with the California Native American Heritage Commission.

History and Description of the Remains

At an unknown date, human remains representing, at minimum, two individuals were removed from an unknown location. On October 4, 1996, the San Bernardino County Sherriff-Coroner's office took custody of two skulls and placed them into curation at the Coroner facility. The human remains were determined to be Native American based on context and an anthropological examination. Between October 1996 and October 2016, numerous attempts were made to determine a most likely decedent with local area Indian Tribes and the California Native American Heritage Commission. No Indian Tribes in California were willing to accept the human remains without clear provenience. No known individuals were identified. No funerary objects were present.

Pursuant to 43 CFR 10.16, the Secretary of the Interior may recommend that culturally unidentifiable human remains with no ''tribal land'' or ''aboriginal land'' provenience be reinterred under State or other law. In January 2017, the San Bernardino County Sheriff-Coroner requested that the Secretary, through the Native American Graves Protection and Repatriation Review Committee, recommend the proposed re-interment of the culturally unidentifiable Native American human remains in this notice, according to State or other law. The Review Committee, acting pursuant to its responsibility under 25 U.S.C. 3006(c)(5), considered the request at its March 2017 meeting and recommended to the Secretary that the proposed re-interment proceed. An April 2017 letter on behalf of the Secretary of the Interior from the National Park Service Associate Director for Cultural Resources, Partnerships, and Science transmitted the Secretary's independent review and concurrence with the Review Committee that:

- No Indian Tribes objected to the proposed re-interment, and
- the San Bernardino County Sheriff-Coroner may proceed with the proposed re-interment of the culturally unidentifiable human remains.

Re-interment is contingent on the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

Determinations Made by the San Bernardino County Sheriff-Coroner

Officials of the San Bernardino County Sheriff-Coroner have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on context and other artifacts found with the human remains.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- Pursuant to 43 CFR 10.11(c)(1), a ''tribal land'' or ''aboriginal land'' provenience cannot be ascertained.
- Pursuant to 43 CFR 10.10(g)(2)(ii) and 43 CFR 10.16, the human remains may be reinterred according to the law of San Bernardino County, CA.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Robert Hunter, Diplomat—ABMDI, Unidentified Persons Coordinator, San Bernardino County Sheriff-Coroner, 175 South Lena Road, San Bernardino, CA 92418, telephone (909) 387–2978, by July 14, 2017. After that date, if no additional requestors have come forward, the human remains may be reinterred.

The San Bernardino County Sheriff-Coroner is responsible for notifying the California Native American Heritage Commission that this notice has been published.

Dated: May 8, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–12293 Filed 6–13–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–MWR–WICR–23043; PS.SMWLA0068.00.1]

Minor Boundary Revision at Wilson's Creek National Battlefield

AGENCY: National Park Service, Interior.

ACTION: Notification of boundary revision.

SUMMARY: The boundary of Wilson's Creek National Battlefield is modified to include 40 acres of land located in Christian County, Missouri, immediately adjacent to the boundary of the national battlefield. The United States will accept a donation from Civil War Trust containing 40 acres of land.

DATES: The effective date of this boundary revision is June 14, 2017.

ADDRESSES: The map depicting this boundary revision is available for inspection at the following locations: National Park Service, Land Resources Program Center, Midwest Region, 601 Riverfront Drive, Omaha, Nebraska 68102 and National Park Service, Department of the Interior, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Chief Realty Officer Daniel L. Betts, National Park Service, Land Resources Program Center, Midwest Region, 601 Riverfront Drive, Omaha, Nebraska 68102, telephone (402) 661–1780.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 54 U.S.C. 100506(c), the boundary of Wilson's Creek National Battlefield is modified to include 40 acres of adjacent land identified as Tract 01–147. The boundary revision is depicted on Map No. 410/133,135, dated June 2016.

Specifically, 54 U.S.C. 100506(c) provides that, after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, the Secretary of the Interior is authorized to make this boundary revision upon publication of notice in the **Federal Register**. The Committees have been notified of this boundary revision. This boundary

revision and subsequent acquisition will contribute to the preservation, protection, and enhancement of the national battlefield.

Dated: March 22, 2017.

Cameron H. Sholly,

Regional Director, Midwest Region.

[FR Doc. 2017–12263 Filed 6–13–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23314; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Allen County-Fort Wayne Historical Society, Fort Wayne, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Allen County-Fort Wayne Historical Society has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Allen County-Fort Wayne Historical Society. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Allen County-Fort Wayne Historical Society at the address in this notice by July 14, 2017.

ADDRESSES: Walter Font, Curator, Allen County-Fort Wayne Historical Society, 302 East Berry Street, Fort Wayne, IN 46802, telephone (260) 426–2882, email *wfont@comcast.net.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Allen County-Fort Wayne Historical Society, Fort Wayne, IN. The human remains and associated funerary objects were removed from Allen County, IN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Allen County-Fort Wayne Historical Society professional staff in consultation with the Indiana University-Purdue University, Fort Wayne, Archaeology Survey office, and representatives of the Miami Tribe of Oklahoma and the Pokagon Band of Potawatomi Indians, Michigan and Indiana.

History and Description of the Remains

On an unknown date, human remains representing, at minimum, 1 individual were removed from an unknown site in northeast Indiana, mostly likely in Allen County, IN. In September 2013, the human remains were found during a collection inventory without identification or provenance data. Sex and age are indeterminate. No known individuals were identified. The 2 associated funerary objects are one ceramic bead and one broken slate gorget.

On an unknown date, human remains representing, at minimum, 1 individual were removed from an unknown site in northeast Indiana, mostly likely in Allen County, IN. In September 2013, the human remains were found during a collection inventory without identification or provenance data. Sex and age are indeterminate. No known individuals were identified. No associated funerary objects are present.

On an unknown date, human remains representing, at minimum, 1 individual were removed from an unknown site in northeast Indiana, mostly likely in Allen County, IN. In September 2013, the human remains were found during a collection inventory without identification or provenance data. Sex and age are indeterminate. No known individuals were identified. The 3 associated funerary objects are one glass vial containing a deer tooth, one pottery sherd, and one piece of a strap handle.

On unknown dates, human remains representing, at minimum, 3 individuals were removed from unknown sites in northeast Indiana, mostly likely in Allen County, IN. In the late 1990s, the human remains were found during a collection inventory without identification or provenance data. Sex and age are indeterminate. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Allen County-Fort Wayne Historical Society

Officials of the Allen County-Fort Wayne Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on an examination by the Indiana University-Purdue University, Fort Wayne, Archaeology Survey office, in November 2013.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 6 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 5 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Miami Tribe of Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Miami Tribe of Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Walter Font, Curator, Allen County-Fort Wayne Historical Society, 302 East Berry Street, Fort Wayne, IN 46802, telephone (260) 426–2882, email *wfont@comcast.net,* by July 14, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and

associated funerary objects to the Miami Tribe of Oklahoma may proceed.

The Allen County-Fort Wayne Historical Society is responsible for notifying the Miami Tribe of Oklahoma and the Pokagon Band of Potawatomi Indians, Michigan and Indiana, that this notice has been published.

Dated: April 27, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–12294 Filed 6–13–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23372; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Arkansas Archeological Survey, Fayetteville, AR; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Arkansas Archeological Survey has corrected an inventory of human remains published in a Notice of Inventory Completion in the **Federal Register** on February 24, 2017. This notice corrects the minimum number of individuals.

ADDRESSES: George Sabo, Director, Arkansas Archeological Survey, 2475 North Hatch Avenue, Fayetteville, AR 72704, telephone (479) 575–3556.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains under the control of the Arkansas Archeological Survey, Fayetteville, AR. The human remains were removed from multiple counties in the state of Arkansas.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals published in a Notice of Inventory Completion in the **Federal Register** (82 FR 11620–11624, February 24, 2017) due to a typographical error. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (82 FR 11620–11624, February 24, 2017), column 1, paragraph 5, sentence 1, under the heading ''Determinations Made by the Arkansas Archeological Survey,'' is corrected by replacing the number ''107'' with the number ''106.''

The Arkansas Archeological Survey is responsible for notifying The Osage Nation (previously listed as the Osage Tribe) that this notice has been published.

Dated: May 8, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–12298 Filed 6–13–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23321; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent to Repatriate Cultural Items: Heard Museum, Phoenix, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Heard Museum, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of sacred objects and objects of cultural patrimony. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Heard Museum. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Heard Museum at the address in this notice by July 14, 2017.

ADDRESSES: David M. Roche, Heard Museum, 2301 North Central Avenue, Phoenix, AZ 85004, telephone (602) 251–0226, email *droche@heard.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the Heard Museum, Phoenix, AZ, that meets the definition of sacred object and object of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

In 1907, one cultural item was created by Jack Tonto (a.k.a. Tonto Jack) for Taylor Gabbard, who lived in the Arizona Territory. The cultural item was passed down to his descendants, exhibited at a branch of the Phoenix Public Library for a number of years, and published online. On April 17, 2014, the cultural item was donated to the Heard Museum and accessioned into their collection. The cultural item is a painted hide.

Representatives of the San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona, have identified the painted hide as affiliated with the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona. They further identify imagery on the hide as having been made for a specific use in a specific ceremony. The practitioner of this ceremony used this cultural item, along with specific songs and prayers to animate the cultural item with power from the creation and specific products of the creation, for the purpose of blessing. Medicine people today practice this ceremony as it has always been practiced. Due to the nature, the beliefs, and the items integral to this ceremony, the hide has ongoing historical, traditional, and cultural importance central to Western Apache culture.

The last part of the ceremony for which this item was made, following the death of the individual for whom it was made, involves placing the hide in a secure location away from human habitation. Failing to put this hide away properly after its more active use or removing this item from its resting place, thus interrupting the unfolding ritual, poses great danger to those who come in contact with it. Putting the item away properly can only be

accomplished by individuals who have been specifically trained to perform this task, and is the only way to restore physical possession of the item to the Creator and to begin completion of the ceremony. The Creator is the only One who has the right to possess this type of cultural item after its use by humans. The traditional cultural authorities who have been consulted have determined that this cultural item must now be properly put away.

Determinations Made by the Heard Museum

Officials of the Heard Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the one cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(3)(D), the one cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred object and object of cultural patrimony and Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to David M. Roche, Heard Museum, 2301 North Central Avenue, Phoenix, AZ 85004, telephone (602) 251–0226, email *droche@heard.org,* by July 14, 2017. After that date, if no additional claimants have come forward, transfer of control of the sacred object and object of cultural patrimony to Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona, may proceed.

The Heard Museum is responsible for notifying the San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona, that this notice has been published.

Dated: April 27, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–12291 Filed 6–13–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23331; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Michigan, Ann Arbor, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Michigan has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the University of Michigan. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the University of Michigan at the address in this notice by July 14, 2017.

ADDRESSES: Dr. Ben Secunda, NAGPRA Project Manager, University of Michigan, Office of Research, 4080 Fleming Building, 503 Thompson Street, Ann Arbor, MI 48109–1340, telephone (734) 647–9085, email *bsecunda@umich.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of Michigan, Ann Arbor, MI. The human remains and associated funerary objects were removed from the Backlund Mound Group site (20ME2), Menominee County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Michigan Museum of Anthropological Archaeology (UMMAA) professional staff in consultation with representatives of the Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); and Pokagon Band of Potawatomi Indians, Michigan and Indiana (hereafter ''The Consulted Tribes'').

Additional requests for consultation were sent to the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Prairie Band of Potawatomi Nation, Kansas; Quechan Tribe of the Fort Yuma Indian Reservation, California and Arizona; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; St. Croix Chippewa Indians of Wisconsin; Sokaogon Chippewa Community, Wisconsin; Turtle

Mountain Band of Chippewa Indians of North Dakota; White Earth Band of the Minnesota Chippewa Tribe, Minnesota; and Winnebago Tribe of Nebraska (hereafter ''The Tribes Invited to Consult'').

History and Description of the Remains

In the summer of 1956, human remains representing, at minimum, 20 individuals were removed from the Backlund Mound Group site (20ME2) in Menominee County, MI. Archeologists from the UMMAA excavated three low, conical mounds on the bank of the Menominee River. Two features within one of the mounds held human remains and funerary objects. In one feature, the human remains consist of 1 child, 4–8 years old, sex indeterminate, and an infant, sex indeterminate. Another feature within the mound, described as a rock-capped ossuary, held the human remains of, at minimum, 18 individuals. The human remains consist of 1 older adult, possibly female; 1 adult female over 50 years old; 4 adult males over 50 years old; 1 adult female over 40 years old; 1 adult male, 30–50 years old; 1 adult male, 35–49 years old; 1 adult male, 30–40 years old; 1 young adult, possibly male, 20–35 years old; 1 adult male, age indeterminate; 1 young adult female, 20–25 years old; 1 adolescent, 11–14 years old, sex indeterminate; 1 child, 8–10 years old, sex indeterminate; 1 child, age and sex indeterminate; 1 neonate; and 1 cremated adult. One lot of DNA extractions, taken from the human remains in this collection between 1996 and 2006, are also included in this notice. The burials have been dated to the Late Woodland Period (A.D. 1350, +/− 110 years) based on Carbon 14 analysis of charcoal from the site. No known individuals were identified. Three associated funerary objects found in the mound fill are one copper spear point; one perforated long bone fragment, possibly deer; and one lot of beak fragments from a female eagle.

The human remains have been determined to be Native American, based on cranial morphology and dental traits. A relationship of shared group identity can be reasonably traced between the Native American human remains from this site and the Menominee Indian Tribe of Wisconsin, based on multiple lines of evidence. The mode of burial, specifically ossuary burial within a conical mound, suggests a merging of practices between the large ossuary burials recorded at late pre-contact sites in the northern Great Lakes area and earlier practices of mound burial observed among northern forager groups. The ceramic assemblage collected from contemporary midden deposits identified at the site is strongly suggestive of Algonquian origin. The site is located within the aboriginal lands of the Menominee as described in traditional and historical accounts, and at a date that makes these descriptions relevant.

Determinations Made by the University of Michigan

Officials of the University of Michigan have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 20 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 3 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Menominee Indian Tribe of Wisconsin.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Ben Secunda, NAGPRA Project Manager, University of Michigan, Office of Research, 4080 Fleming Building, 503 Thompson Street, Ann Arbor, MI 48109–1340, telephone (734) 647–9085, email *bsecunda@umich.edu,* by July 14, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Menominee Indian Tribe of Wisconsin may proceed.

The University of Michigan is responsible for notifying The Consulted Tribes and The Tribes Invited to Consult that this notice has been published.

Dated: April 28, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–12290 Filed 6–13–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23404; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent to Repatriate Cultural Items: State Historical Society of North Dakota, Bismarck, ND

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The State Historical Society of North Dakota, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of objects of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the State Historical Society of North Dakota. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the State Historical Society of North Dakota at the address in this notice by July 14, 2017.

ADDRESSES: Melissa Thompson, State Historical Society of North Dakota, 612 East Boulevard Avenue, Bismarck, ND 58505, telephone (701) 328–2691, email *methompson@nd.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the State Historical Society of North Dakota, Bismarck, ND, that meet the definition of objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

On an unknown date, an unknown number of cultural items were removed from an unknown site in an unknown location. In August of 2016, a wooden anthropomorphic figurine was found in the Museum Division storage space. The cultural item was found in a box dating to the 1950s that was used for storage of items in the possession of the State Historical Society of North Dakota (SHSND), but never formally accessioned or cataloged into the museum collection. Museum opinion is that the figurine was placed in the storage box in the 1950s, but no other provenance information is available. The object of cultural patrimony is a Can Otina. It is an object that does not belong to an individual, though individuals care for it. It is an object that would be used for protection of the camp, portending future events, helping with planting or finding food or medicines, or serving the needs of the community in other ways. It is a helper to the people and an essential part of tribal identity and the maintenance of tribal traditions.

The Can Otina was identified by a Dakota spiritual leader as belonging to the Sisitunwan (Dwellers by the Fish Camp-Ground) fire of the Oceti Sakowin (Seven Council Fires) that make up what is often referred to as the ''Sioux Nation.'' In addition to the Sisitunwan, the Oceti Sakowin is composed of the Wahpetunwan, Bdewakantunwan, Wahpekute, Ihanktunwan, Ihanktunwanna, and Titunwan peoples, all of whom are Dakota, Lakota, or Nakota. The Sisitunwan are Dakota people. Their first reservation land was negotiated under the Treaty of Traverse des Sioux in 1851, and then initially reduced under the Treaty of 1858, relegating this council fire to a strip of land bordering the Minnesota River in southern Minnesota. These treaties were unilaterally abrogated by the United States Government after the U.S.-Dakota War of 1862 and Dakota people were force-marched and ethnically-cleansed from their Minnesota homeland in 1863. By the late 1880s, Sisitunwan and Wahpetunwan Dakota people began returning to this portion of Minnesota and reestablishing a community near what was formerly called the Upper Sioux Agency. A new, vastly smaller reservation was established by the federal government in 1938, all of which is located on the original reservation treaty land. Upper Sioux is one of the few Oceti Sakowin reservations where a distinct segment of the population specifically identifies as Sisitunwan (others include Spirit Lake, Fort Peck, and the Sisseton-Wahpeton Sioux Tribe), though people with Sisitunwan blood continue to live on most, if not all, Oceti Sakowin reservation communities. The distinctive Sisitunwan identity still pervasive at Upper Sioux makes this community a strong choice for repatriation of Sisitunwan NAGPRA collections.

Determinations Made by the State Historical Society of North Dakota

Officials of the State Historical Society of North Dakota have determined that:

- Pursuant to 25 U.S.C. 3001(3)(D), the one cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the object of cultural patrimony and the Upper Sioux Community, Minnesota.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Melissa Thompson, State Historical Society of North Dakota, 612 East Boulevard Avenue, Bismarck, ND 58505, telephone (701) 328–2691, email *methompson@nd.gov,* by July 14, 2017. After that date, if no additional claimants have come forward, transfer of control of the object of cultural patrimony to the Upper Sioux Community, Minnesota, may proceed.

The State Historical Society of North Dakota is responsible for notifying the Upper Sioux Community, Minnesota, that this notice has been published.

Dated: May 15, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–12297 Filed 6–13–17; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–663 (Fourth Review)]

Paper Clips From China; Cancellation of Hearing for Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: June 8, 2017.

FOR FURTHER INFORMATION CONTACT: Justin Enck (202–205–3363), 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 this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On March 1, 2017, the Commission established a schedule for the conduct of this review (82 FR 13132, March 9, 2017). Subsequently, counsel for the domestic interested parties filed a request for consideration of cancellation of the hearing. Counsel indicated a willingness to submit written testimony and responses to any Commission questions in lieu of an actual hearing. No other party has entered an appearance in this review. Consequently, the public hearing in connection with this review, scheduled to begin at 9:30 a.m. on Thursday, June 22, 2017, at the U.S. International Trade Commission Building, is cancelled. Parties to this review should respond to any written questions posed by the Commission in their posthearing briefs, which are due to be filed on July 3, 2017.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: June 8, 2017.

Katherine M. Hiner,

Supervisory Attorney.

[FR Doc. 2017–12314 Filed 6–13–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Backpack Chairs, DN 3229;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Rio Brands, LLC on June 8, 2017. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain backpack chairs. The complaint names as respondent GCI Outdoor, Inc. of Higganum, CT. The complainant requests that the Commission issue a limited exclusion order, a cease and desist order, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3229'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: June 8, 2017.

Katherine M. Hiner,

Supervisory Attorney.

[FR Doc. 2017–12316 Filed 6–13–17; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–539–C (Fourth Review)]

Uranium From Russia; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether termination of the suspended investigation on uranium from Russia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: May 8, 2017.

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*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On May 8, 2017, the Commission determined that the domestic interested party group response to its notice of institution (82 FR 8951, February 1, 2017) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).[2]

For further information concerning the conduct of this review 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).

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on August 2, 2017, and made available to persons on the Administrative Protective Order service list for this review. 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 review and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before August 9, 2017 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by August 9, 2017. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, 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 rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (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 this review is 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: This review is 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.

Issued: June 9, 2017.

Katherine M. Hiner,

Supervisory Attorney.

[FR Doc. 2017–12315 Filed 6–13–17; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] Commissioner Broadbent voted to conduct a full review.

[3] The Commission has found the responses submitted by Centrus Energy Corp. and United States Enrichment Corporation; Crow Butte Resources, Inc.; Energy Fuels Inc.; Louisiana Energy Services, LLC; Power Resources, Inc.; and Ur-Energy USA Inc. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1740]

Webinar Meeting of the Federal Advisory Committee on Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of webinar meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has scheduled a webinar meeting of the Federal Advisory Committee on Juvenile Justice (FACJJ).

DATES: The webinar meeting will take place online on Monday, July 17, 2017, at 12:00 p.m.–2:00 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Jeff Slowikowski, Designated Federal Official, OJJDP, *Jeff.Slowikowski@usdoj.gov* or (202) 616–3646. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee on Juvenile Justice (FACJJ), established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App.2), will meet to carry out its advisory functions under Section 223(f)(2)(C–E) of the Juvenile Justice and Delinquency Prevention Act of 2002. The FACJJ is composed of representatives from the states and territories. FACJJ member duties include: Reviewing federal policies regarding juvenile justice and delinquency prevention; advising the OJJDP Administrator with respect to particular functions and aspects of OJJDP; and advising the President and Congress with regard to State perspectives on the operation of OJJDP

and federal legislation pertaining to juvenile justice and delinquency prevention. More information on the FACJJ may be found at *https://facjj.ojp.gov/.*

Meeting agenda: The proposed agenda includes: (a) Opening Introductions, and Webinar Logistics; (b) Remarks of Eileen M. Garry, Acting Administrator, OJJDP; (c) FACJJ Subcommittee Reports (Legislation; Confidentiality of Records; Research and Publications; Transitioning Youth); (d) FACJJ Administrative Business; and (e) Summary, Next Steps, and Meeting Adjournment.

To participate in, or view the webinar meeting, FACJJ members and the public must pre-register online. Members and interested persons must link to the webinar registration portal through *https://facjj.ojp.gov/* no later than Monday, July 10, 2017. Upon registration, information will be sent to you at the email address you provide to enable you to connect to the webinar. Should problems arise with webinar registration, please call Melissa Kanaya at 202–532–0121. [This is not a toll-free telephone number.] Note: Members of the public will be able to listen to and view the webinar as observers, but will not be able to participate actively in the webinar.

An on-site room is available for members of the public interested in viewing the webinar in person. If members of the public wish to view the webinar in person, they must notify Melissa Kanaya by email message at *Melissa.Kanaya@usdoj.gov* no later than Monday, July 10, 2017.

FACJJ members will not be physically present in Washington, DC for the webinar. They will participate in the webinar from their respective home jurisdictions.

Written comments: Interested parties may submit written comments by email message in advance of the webinar to Jeff Slowikowski, Designated Federal Official, at *Jeff.Slowikowski@usdoj.gov,* no later than Monday, July 10, 2017. In the alternative, interested parties may fax comments to 202–307–2819 and contact Melissa Kanaya at 202–532–0121 to ensure that they are received. [These are not toll-free numbers.]

Eileen M. Garry,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 2017–12341 Filed 6–13–17; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Petition for Classifying Labor Surplus Areas

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Petition for Classifying Labor Surplus Areas,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before July 14, 2017.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201705-1205-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Petition for Classifying Labor Surplus Areas (LSA) information collection. Under Executive Orders 12073 (Federal Procurement in Labor Surplus Areas) and 10582 (Uniform Procedures, Buy American Act), the DOL issues an annual list showing each LSA used by a Federal or State entity in a number of actions such as procurement and property transfer. The annual LSA list is updated during the year, based upon petitions submitted to the DOL by State Workforce Agencies requesting additional areas for LSA certification. This information collection provides the processes by which a State can submit a petition for additional LSA certification. E.O. 12073 section 1–301 authorizes this information collection. *See* 43 FR 36873, August 18, 1978.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0207.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on August 31, 2017. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 9, 2017 (82 FR 13139).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0207. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
• Enhance the quality, utility, and clarity of the information to be collected; and
• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.
Title of Collection: Petition for Classifying Labor Surplus Areas.
OMB Control Number: 1205–0207.
Affected Public: State, Local, and Tribal Governments.
Total Estimated Number of Respondents: 3.
Total Estimated Number of Responses: 3.
Total Estimated Annual Time Burden: 9 hours.
Total Estimated Annual Other Costs Burden: $0.

Dated: June 8, 2017.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2017–12282 Filed 6–13–17; 8:45 am]

BILLING CODE 4510–FN–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Finance Committee will meet telephonically on June 26, 2017. The meeting will commence at 2:00 p.m., EDT, and will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington, DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

• *Call toll-free number:* 1–866–451–4981;
• *When prompted, enter the following numeric pass code:* 5907707348.
• When connected to the call, please immediately ''MUTE'' your telephone. Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

STATUS OF MEETING: Open.

Matters To Be Considered

1. Approval of agenda
2. Discussion with LSC Management regarding recommendations for LSC's Fiscal Year 2019 budget request
   • Jim Sandman, President
   • Carol Bergman, Vice President for Government Relations & Public Affairs
3. Discussion with the LSC Inspector General regarding OIG's Fiscal Year 2019 budget request
   • Jeffrey Schanz, Inspector General
   • David Maddox, Assistant Inspector General for Management and Evaluation
4. Public comment
5. Consider and act on other business
6. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: June 12, 2017.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs and General Counsel.

[FR Doc. 2017–12467 Filed 6–12–17; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2017–050]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed extension request.

SUMMARY: NARA proposes to request an extension from the Office of Management and Budget (OMB) of approval to use a voluntary survey of visitors to our downtown facility in Washington, DC. We use the American Association of State and Local History (AASLH) customer survey to ask a random sample of visitors to the National Archives Museum whether the Museum is successfully achieving its goals, and to help us determine if we need to make any modifications to our services. The survey takes 12 minutes. We invite you to comment on certain aspects of this proposed information collection.

DATES: We must receive written comments on or before August 14, 2017.

ADDRESSES: Send comments to Paperwork Reduction Act Comments (MP), Room 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, or email them to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Tamee Fechhelm by telephone at 301–837–1694, or by email at *tamee.fechhelm@nara.gov,* with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: We invite the public and Federal agencies to comment on information collections we propose to renew. We submit proposals to renew information collections first through a public comment period and then to OMB for review and approval pursuant to the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et. seq.*). We will summarize or include in our request for OMB approval any comments you submit in response to this notice. We invite comments on: (a) Whether the proposed information collection is necessary for NARA to properly perform its functions, including whether the information will have practical utility; (b) our estimate of the information collection's burden on respondents; (c) ways to enhance the quality, utility, and clarity of the information we propose to collect; (d)

ways to minimize the burden on respondents of collecting the information, including through use of information technology; and (e) whether this collection affects small businesses. We will summarize any comments you submit and include the summary in our request for OMB approval. All comments will become a matter of public record. In this notice, NARA solicits comments concerning the following information collection:

Title: NARA Visitors Study.

OMB number: 3095–0067.

Agency form number: n/a.

Type of review: Regular.

Affected public: Individuals who visit the National Archives Museum in Washington, DC.

Estimated number of respondents: 200.

Estimated time per response: 12 minutes.

Frequency of response: On occasion (when an individual visits the National Archives Museum in Washington, DC between July–October 2018 and July–October 2020).

Estimated total annual burden hours: 40 hours.

Abstract: The general purpose of this voluntary data collection is to benchmark NARA's performance in relation to other history museums. The information we collect from visitors will allow us to assess the overall impact, expectations, presentation, logistics, motivation, demographic profile, and learning experience visitors receive from the visit, and to determine whether we are meeting our goals.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2017–12249 Filed 6–13–17; 8:45 a.m.]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2017–049]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is requesting an extension from the Office of Management and Budget (OMB) of approval to use the following three information collections. We use the first information collection form to advise requesters of the procedures they should follow to request certified copies of records for use in civil litigation or criminal actions in courts of law, and the information they need to provide us so that we can identify the correct records. Veterans, military dependents, and other authorized people use the second information collection form to request information from, or copies of, documents in military personnel, military medical, and dependent medical records. Genealogical researchers use the National Archives Trust Fund (NATF) forms contained in the third information collection to order records for genealogical research. We invite you to comment on these three proposed information collections.

DATES: OMB must receive written comments at the address below on or before July 14, 2017.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, desk officer for NARA, by mail to Office of Management and Budget, New Executive Office Building, Washington, DC 20503, by fax to 202–395–5167, or by email to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Please direct requests for additional information or copies of the proposed information collection and supporting statement to Tamee Fechhelm by phone at 301–837–1694 or by email to *tamee.fechhelm@nara.gov.*

SUPPLEMENTARY INFORMATION: We invite the public and Federal agencies to comment on information collections we propose to renew. We submit proposals to renew information collections first through a public comment period and then to OMB for review and approval pursuant to the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*). We published a notice of proposed collection for these information collections on April 7, 2017 (82 FR 17038), and we received no comments. We have therefore submitted the described information collections to OMB for approval.

We invite comments on: (a) Whether the proposed information collections are necessary for NARA to properly perform its functions, including whether the information will have practical utility; (b) our estimates of the information collection's burden on respondents; (c) ways to enhance the quality, utility, and clarity of the information we propose to collect; (d) ways to minimize the burden on respondents of collecting the information, including through use of information technology; and (e) whether these collections affect small businesses. All comments will become a matter of public record. In this notice, NARA solicits comments concerning the following information collections:

1. *Title:* Court Order Requirements.

OMB number: 3095–0038.

Agency form number: NA Form 13027.

Type of review: Regular.

Affected public: Military service members, their dependents, veterans, former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 5,000.

Estimated time per response: 15 minutes.

Frequency of response: On occasion (when respondent needs to request information for use in litigation or an action in a court of law).

Estimated total annual burden hours: 1,250 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Office of Personnel Management, NARA's National Personnel Records Center (NPRC) administers former Federal civilian employee Official Personnel Folders (OPF) and Employee Medical Folders (EMF). In accordance with rules issued by the Department of Defense and the Department of Homeland Security (U.S. Coast Guard), NPRC also administers military service records of veterans after discharge, retirement, and death, and the medical records of these veterans, current members of the Armed Forces, and their dependents. We use the NA Form 13027, Court Order Requirements, to advise requesters of (1) the procedures they should follow to request certified copies of records for use in civil litigation or criminal actions in courts of law and (2) the information they need to provide so that we can identify the correct records.

2. *Title:* Forms Relating to Military Service Records.

OMB number: 3095–0039.

Agency form number: NA Forms 13036, 13042, 13055, 13075, and 13177.

Type of review: Regular.

Affected public: Veterans, military dependents, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 132,500.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent wishes to request information from a military personnel, military medical, and dependent medical record).

Estimated total annual burden hours: 11,042 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the

Department of Defense and the Department of Homeland Security (U.S. Coast Guard), NARA's National Personnel Records Center (NPRC) administers military personnel and medical records of veterans after discharge, retirement, and death. In addition, NRPC administers the medical records of dependents of service personnel. When veterans, dependents, and other authorized individuals request information from, or copies of, documents in military personnel, military medical, and dependent medical records, they must provide on forms or in letters certain information about the veteran and the nature of the request so that we may find the correct records, protect the privacy of the person in the records from unauthorized access, and reconstruct information if needed. We ask requesters who seek medical records of dependents of service personnel and hospitalization records of military personnel to complete NA Form 13042, Request for Information Needed to Locate Medical Records, so that NPRC staff can locate the desired records. Certain types of information contained in military personnel and medical records are restricted from disclosure unless the veteran provides a more specific release authorization than is normally required for other records. In such cases, we ask veterans to complete NA Form 13036, Authorization for Release of Military Medical Patient Records, to authorize release to a third party of a restricted type of information found in the desired record. A major fire at the NPRC on July 12, 1973, destroyed numerous military records. If a person's request involves records or information from records that may have been lost in the fire, we may ask them to complete NA Form 13075, Questionnaire about Military Service, or NA Form 13055, Request for Information Needed to Reconstruct Medical Data, so that NPRC staff can search alternative sources to reconstruct the requested information. Requesters may check the status of a request for clinical or medical treatment records through the online NA Form 13177, Check the Status of a Clinical & Medical & Treatment Records Request. We use the information entered here to identify and track the requests and provide status updates.

3. *Title:* Order Forms for Genealogical Research in the National Archives.

OMB number: 3095–0027.

Agency form numbers: NATF Forms 84, 85, and 86.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 10,318.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 1,720.

We use these National Archives Trust Fund (NATF) forms to process requests for certain types of genealogical research documents. We need to handle requests for these types of records by order due to the volume of requests we receive for them; otherwise, we would not be able to get documents to people in a timely way. The forms also allow us to collect specific information from the researcher that we need to search for the records they want. The forms are: NATF 84, National Archives Order for Copies of Land Entry Files; NATF 85, National Archives Order for Copies of Pension or Bounty Land Warrant Applications; and NATF 86, National Archives Order for Copies of Military Service Records. As a convenience, the paper forms allow researchers to provide credit card information to authorize billing and expedited mailing of the copies. Researchers can instead use Order Online! (*http://www.archives.gov/research_room/obtain_copies/military_and_genealogy_order_forms.html*) to complete the forms and order the copies.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2017–12248 Filed 6–13–17; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0133]

Information Collection: 10 CFR Part 4, Nondiscrimination in Federally Assisted Commission Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Nondiscrimination in Federally Assisted Commission Programs.''

DATES: Submit comments by August 14, 2017. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0133. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–2 F43, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0133 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0133.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement is available in ADAMS under Accession No. ML17108A722.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

Please include Docket ID NRC–2017–0133 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''10 CFR part 4, Nondiscrimination in Federally Assisted Commission Programs.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection.

1. *The title of the information collection:* ''Nondiscrimination in Federally Assisted Commission Programs.''

2. *OMB approval number:* 3150–0053.

3. *Type of submission:* Extension.

4. *The form number if applicable:* NRC Form 781 and 782.

5. *How often the collection is required or requested:* Provisions for this collection are covered in § 4.331 of title 10 of the *Code of Federal Regulations* (10 CFR) Compliance Reviews, which indicates that the NRC may conduct compliance reviews and Pre-Award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the act and these regulations. The NRC may conduct these reviews even in absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.

6. *Who will be required or asked to respond:* Recipients of Federal Financial Assistance provided by the NRC (including Educational Institutions, Other Nonprofit Organizations receiving Federal Assistance, and Agreement States).

7. *The estimated number of annual responses:* 600.

8. *The estimated number of annual respondents:* 200.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 3,600 (3,000 hrs for reporting (5 hrs per respondent) and 600 hrs for recordkeeping (3 hrs per recordkeeper).

10. *Abstract:* The regulations under 10 CFR part 4 implement the provisions of the Title VI of the Civil Rights of 1964, Public Law 88–352; (78 Stat. 241; 42 U.S.C. 2000a note), Title IV of the Energy Reorganization Act of 1974, Public Law 93–438, (88 stat. 1233; 42 U.S.C. 580 note), which relate to nondiscrimination with respect to race, color, national origin or sex in any program or activity receiving Federal financial assistance from NRC; Section 504 or the Rehabilitation Act of 1973, as amended, Public Law 93–112 (87 Stat. 355; 29 U.S.C. 701 note), Public Law 95–602 (92 Stat. 2955; 29 U.S.C. 701 note, which relates to nondiscrimination with respect to disability in any program or activity receiving Federal financial assistance; and the Age Discrimination Act of 1975, as amended, Public Law 94–135 (89 Stat. 713; 42 U.S.C. 3001 note), Public Law 95–478 (92 Stat. 1513; 42 U.S.C. 3001 note), which relates to nondiscrimination on the basis of age in any program or activity receiving Federal financial assistance. The public may examine, and have copied for a fee, publicly-available documents, including the final supporting statement at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance request are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 6th day of May 2017.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2017–12333 Filed 6–13–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company; Vogtle Electric Generating Plant, Units 3 and 4; Boric Acid Storage Tank Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment Nos. 78 and 77 to Combined Licenses (COLs), NPF–91 and NPF–92 for the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, respectively. The COLs were issued to Southern Nuclear Operating Company (SNC), and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (the licensee) for construction and operation of the

Vogtle Electric Generating Station (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on May 25, 2017.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 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 Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@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 *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated October 26, 2016, and is available in ADAMS under Accession No. ML16300A325.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: *Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from Paragraph B of Section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 78 and 77 to COLs, NPF–91 and NPF–92, respectively, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' of appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes that would revise the Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant-specific DCD Tier 2 information. The proposed amendment also involves related changes to plant-specific Tier 1 information, with corresponding changes to the associated COL Appendix C information. Specifically, the license amendment request (LAR) revises the inspections, tests, analyses, and acceptance criteria (ITAAC) in COL Appendix C Table 2.3.2–4, ITAAC No. 2.3.02.8a.ii to state that the volume in the boric acid storage tank is at least 70,000 gallons between the tank suction point and the tank overflow; and COL Appendix C Table 2.3.2–4, ITAAC No. 2.3.02.8a.iii to state that the total chemical and volume control system makeup flow to the reactor coolant system is less than or equal to 175 gpm.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and Section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML17072A320.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML17072A318 and ML17072A315, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML17072A316 and ML17072A314, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In an application dated October 26, 2016, the licensee requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, appendix D, as part of license amendment request 15–028, ''Boric Acid Storage Tank Suction Point ITAAC Changes.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML17072A320, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information related to the boric acid storage tank (BAST) available volume at the suction point, chemical and volume control system (CVS) makeup flow rate, and BAST installation, as described in the licensee's request dated October 26, 2016. This exemption is related to, and necessary for the granting of License Amendment Nos. 78 and 77 for Units 3 and 4, respectively, which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML17072A320), this exemption meets the eligibility criteria for categorical exclusion set forth in 10

CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated October 26, 2016 (ADAMS Accession No. ML16300A325), the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** Notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on December 20, 2016 (81 FR 92872). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on October 26, 2016. The exemption and amendment were issued on May 25, 2017, as part of a combined package to the licensee (ADAMS Accession No. ML17072A312).

Dated at Rockville, Maryland, this 5th day of June 2017.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–12335 Filed 6–13–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–027 and 52–028; NRC–2008–0441]

South Carolina Electric & Gas Company, South Carolina Public Service Authority; Virgil C. Summer Nuclear Station, Units 2 and 3; Boric Acid Storage Tank Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment No. 73 to Combined Licenses (COLs), NPF–93 and NPF–94. The COLs were issued to South Carolina Electric & Gas Company, (SCE&G); for construction and operation of the Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, located in Fairfield County, South Carolina.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on May 24, 2017.

ADDRESSES: Please refer to Docket ID NRC–2008–0441 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 Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0441. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@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 *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated September 29, 2016, and is available in ADAMS under Accession No. ML16273A557.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Billy Gleaves, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from Paragraph B of Section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment No. 73 to COLs, NPF–93 and NPF–94, to SCE&G. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow SCE&G to depart from Tier 1 information. With the requested amendment, SCE&G sought proposed changes that would revise the Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant-specific DCD Tier 2 information. The proposed amendment also involves related changes to plant-specific Tier 1 information, with corresponding changes to the associated COL Appendix C information. Specifically, the license amendment request revises the inspections, tests, analyses, and acceptance criteria (ITAAC) in COL Appendix C Table 2.3.2–4, ITAAC No. 2.3.02.8a.ii to state that the volume in the BAST is at least 70,000 gallons between the tank suction point and the tank overflow; and COL Appendix C Table 2.3.2–4, ITAAC No. 2.3.02.8a.iii to state that the total CVS makeup flow to the RCS is less than or equal to 175 gpm.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather

than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and Section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML17072A125.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to SCE&G for VCSNS Units 2 and 3 (COLs NPF–93 and NPF–94). The exemption documents for VCSNS Units 2 and 3 can be found in ADAMS under Accession Nos. ML17072A117 and ML17072A118, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–93 and NPF–94 are available in ADAMS under Accession Nos. ML17072A111 and ML17072A114, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VCSNS Units 2 and Unit 3. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In an application dated September 29, 2016, SCE&G requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, appendix D, as part of license amendment request 15–11, ''Boric Acid Storage Tank Suction Point ITAAC Changes.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML17072A125, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, SCE&G is granted an exemption from the certified DCD Tier 1 information related to the boric acid storage tank (BAST) available volume at the suction point, chemical and volume control system (CVS) makeup flow rate, and BAST installation, as described in SCE&G's request dated September 29, 2016. This exemption is related to, and necessary for the granting of License Amendment No. 73, which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML17072A125), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated September 29, 2016 (ADAMS Accession No. ML16273A557), SCE&G requested that the NRC amend the COLs for VCSNS, Units 2 and 3, COLs NPF–93 and NPF–94. The proposed amendment is described in Section I of this **Federal Register** Notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on December 20, 2016 (81 FR 92872). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that SCE&G requested on September 29, 2016.

The exemption and amendment were issued on May 24, 2017, as part of a combined package to SCE&G (ADAMS Accession No. ML17072A069).

Dated at Rockville, Maryland, this 5th day of June 2017.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–12337 Filed 6–13–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on APR1400; Notice of Meeting

The ACRS Subcommittee on APR1400 will hold a meeting on June 20–21, 2017, at 11545 Rockville Pike, Room T–2B1, Rockville, Maryland 20852.

The meeting will be open to public attendance with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

Tuesday, June 20, 2017, 8:30 a.m. Until 5:00 p.m. and Wednesday, June 21, 2017, 8:30 a.m. Until 12:00 p.m.

The Subcommittee will review the APR1400 design control document review, Chapter 7, ''Instrumentation and Controls'' and Chapter 18, ''Human Factors Engineering.'' The Subcommittee will hear presentations by and hold discussions with the NRC staff and Korea Hydro & Nuclear Power Company regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone 301–415–7111 or Email: *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation

should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2016, (81 FR 71543).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland 20852. After registering with Security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: June 2, 2017.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2017–12268 Filed 6–13–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–017; NRC–2008–0066]

Virginia Electric and Power Company; North Anna Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Combined licenses and record of decision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a combined license (No. NPF–103) to Virginia Electric and Power Company (doing business as Dominion Virginia Power) for North Anna Unit 3. In addition, the NRC has prepared a Summary Record of Decision (ROD) that supports the NRC's decision to issue the above-named combined license.

DATES: Combined license NPF–103 became effective on June 2, 2017.

ADDRESSES: Please refer to Docket ID NRC–2008–0066 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 Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0066. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals 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 *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: James Shea, telephone: 301–415–1388, email: *James.Shea@nrc.gov* regarding safety matters; or Tamsen Dozier, telephone: 301–415–2272, email: *Tamsen.Dozier@nrc.gov* regarding environmental matters. Both are staff of the Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 2.106 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is providing notice of the issuance of combined license NPF–103 to Virginia Electric and Power Company. Under 10 CFR 50.102(c), the NRC is providing notice of the Commission's Memorandum and Order documenting its final decision on the uncontested hearing, which serves as the ROD in this proceeding. With respect to the application for combined licenses filed by Virginia Electric and Power Company, the NRC finds that the applicable standards and requirements of the Atomic Energy Act of 1954, as amended, (AEA) and the Commission's regulations have been met. The NRC finds that any required notifications to other agencies or bodies have been duly made and that there is reasonable assurance that the facilities will be constructed and will operate in conformity with the license, the provisions of the AEA, and the Commission's regulations. Furthermore, the NRC finds that Virginia Electric and Power Company is technically and financially qualified to engage in the activities authorized, and that issuance of the licenses will not be inimical to the common defense and security or to the health and safety of the public. Finally, the NRC has determined that the findings required by subpart A of 10 CFR part 51 have been made.

Accordingly, the combined license was issued on June 2, 2017, and became effective immediately.

II. Further Information

The NRC has prepared a Final Safety Evaluation Report (FSER) and Final Supplemental Environmental Impact Statement (FSEIS) that document the information reviewed and the NRC's conclusion. The Commission has also issued its memorandum and order documenting its final decision on the uncontested hearing held on March 23, 2017, which serves as the ROD in this proceeding. The NRC also prepared a document summarizing the ROD to accompany its actions on the combined license application; this ''Summary ROD'' incorporates by reference materials contained in the FSEIS. The FSER, FSEIS, Summary ROD, and accompanying documentation included in the combined license package, as well as the Commission's hearing decision and Summary ROD, are available online in the ADAMS Public Document collection at *http://www.nrc.gov/reading-rm/adams.html.* From this site, persons can access the NRC's ADAMS, which provides text and image files of NRC's public documents.

III. Availability of Documents

The documents identified in the following table are available to interested persons through the ADAMS Public Documents collection. A copy of the combined license application is also available for public inspection at the NRC's PDR and at *http://www.nrc.gov/reactors/new-reactors/col.html.*

Document	ADAMS Accession No.
Final Safety Evaluation Report for Combined License for North Anna Unit 3	ML16259A210
Final Supplemental Environmental Impact Statement for Combined License (COL) for North Anna Unit 3	ML100680117
Commission's Memorandum and Order on the uncontested hearing (Record of Decision)	ML17151A406
Summary Record of Decision	ML17121A548
Letter transmitting Combined License No. NPF–103 and accompanying documentation	ML17128A500
Combined License No. NPF–103	ML17095A813

Dated at Rockville, Maryland, this 2nd day of June 2017.

For the Nuclear Regulatory Commission.

Francis M. Akstulewicz,

Director, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–12271 Filed 6–13–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

[Docket Nos. 52–040–COL and 52–041–COL; ASLBP No. 10–903–02–COL–BD01]

In the Matter of Florida Power & Light Company (Turkey Point Units 6 and 7)

June 8, 2017.

Before Administrative Judges: E. Roy Hawkens, Chairman, Dr. Michael F. Kennedy, Dr. William C. Burnett

Notice and Order

(Scheduling and Providing Instructions for Oral Argument)

Pending before this Licensing Board is a request for a hearing and petition to intervene submitted on April 18, 2017 by the City of Miami, the Village of Pinecrest, and the City of South Miami (Petitioners).[1] Petitioners' proffered contention alleges that:

> The [Final Safety Evaluation Report (FSER)] is deficient in concluding that [Florida Power & Light Company (FPL)] has demonstrated that it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs and FPL has failed to indicate source(s) of funds to cover these costs.[2]

After reviewing the petition and the subsequently filed related pleadings,[3] the Board has determined that oral argument will assist it in resolving the issues presented. The Board will hold a telephonic oral argument concerning contention admissibility on Tuesday, June 20, 2017, at 2:00 p.m. EDT.

The Board will hear argument from counsel for the parties in the following order: (1) Petitioners; (2) FPL; and (3) the NRC Staff. Petitioners will have 60 minutes of argument time, and they may reserve up to 20 minutes of that time for rebuttal. FPL and the NRC Staff will each have 30 minutes of argument time.

The following list includes topics the parties should address during oral argument. This list is not intended to be exclusive.

- Whether Westinghouse's bankruptcy filing, the resulting alleged termination of its Reservation Agreement with FPL, or the lack of a construction agreement between Westinghouse and FPL raise a genuine dispute on a material issue of law or fact with FPL's application for a combined license
- Whether FPL's ability to recover costs is material to the NRC Staff's determination of FPL's financial qualifications
- Whether Westinghouse's bankruptcy raises a genuine dispute on a material issue if FPL's ability to recover costs is not material to the NRC Staff's determination of FPL's financial qualifications
- The extent of the NRC Staff's review of an applicant's financial qualifications and the degree to which an applicant must be financially qualified to engage in construction of new nuclear units
- The feasibility of the Turkey Point project following Westinghouse's bankruptcy
- The effect on the petition of FPL's May 1 filing to the Florida Public Service Commission to request a deferral of nuclear cost recovery
- The effect on the petition of FPL's May 1 representation to the Florida Public Service Commission that the Turkey Point project is on a ''pause''

On or before Friday, June 16, parties shall provide by email to the Board and the service list the name of the attorney who will present oral argument. The Board's law clerk, Kimberly Hsu, will provide the dial-in number and passcode to be used by counsel for the oral argument. No witnesses, other representatives of the parties, or members of the public will be heard during the argument. However, individuals who wish to hear the oral argument live on the listen-only telephone line may do so, and should contact Ms. Hsu at *Kimberly.Hsu@nrc.gov* or (301) 415–5939 for the dial-in number and passcode.

It is so ordered.

Rockville, Maryland.

Dated: June 8, 2017.

For the Atomic Safety and Licensing Board.

E. Roy Hawkens,

Chairman, Administrative Judge.

[FR Doc. 2017–12358 Filed 6–13–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–1014, 72–59, and 50–271; NRC–2017–0134]

Entergy Nuclear Operations, Inc.; Vermont Yankee Nuclear Power Station; Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a request submitted by Entergy Nuclear Operations, Inc. (Entergy) on November 9, 2016, and supplemented on January 9, 2017, for its general license to operate an independent spent fuel storage installation (ISFSI) at the Vermont Yankee Nuclear Power Station (VYNPS). This exemption would permit the VYNPS to load and store certain low-enriched channeled undamaged fuel assemblies with higher enriched fuel assemblies in the same HI–STORM 100 multi-purpose canister (MPC)–68M using Certificate of Compliance (CoC) No. 1014, Amendment No. 10.

[1] *See* Petition for Leave to Intervene in a Hearing on [FPL's] Combined Construction and Operating License Application for Turkey Point Units 6 & 7 and File a New Contention (Apr. 18, 2017) [hereinafter Petition].

[2] Petition at 7.

[3] *See* NRC Staff's Response to New Arguments Raised in Petitioners' Reply (June 1, 2017); Petitioners' Reply to NRC Staff and FPL's Answers to Petition for Leave to Intervene in a Hearing on [FPL's] Combined Construction and Operating License Application for Turkey Point Units 6 & 7 and File a New Contention (May 22, 2017); NRC Staff Answer to Petition for Leave to Intervene and [File] New Contention (May 15, 2017); [FPL's] Answer Opposing [Petitioners'] Petition to Intervene and Request for Hearing Regarding the Combined Construction and Operating License Application for Turkey Point Units 6 & 7 (May 15, 2017).

DATES: June 14, 2017.

ADDRESSES: Please refer to Docket ID NRC–2017–0134 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 Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0134. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@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 *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Yen-Ju Chen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–1018; email: *Yen-Ju.Chen@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The VYNPS began operation in 1972. The reactor was permanently shut down on December 29, 2014. The VYNPS currently stores spent boiling-water reactor (BWR) fuel assemblies at its ISFSI in thirteen (13) HI–STORM 100 casks under CoC No. 1014, Amendment No. 2. The remaining spent fuel assemblies were removed from the reactor and transferred to the spent fuel pool. Entergy, which owns the facility, submitted the VYNPS Post-Shutdown Decommissioning Activities Report (PSDAR) to the NRC on December 19, 2014. In the PSDAR, Entergy stated its intention to move all of the spent nuclear fuel assemblies into dry cask storage by 2020 and put the plant into SAFSTOR [1] until it is ready to fully decommission the facility.

Consistent with subpart K of part 72 of title 10 of the *Code of Federal Regulations* (10 CFR), a general license is issued for the storage of spent fuel in an ISFSI at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 50. Entergy is currently authorized to store spent fuel at the VYNPS ISFSI under the 10 CFR part 72 general license provisions. Entergy plans to use Holtec HI–STORM 100 storage casks, as approved by the NRC under CoC No. 1014, Amendment No. 10, at the VYNPS for dry storage of spent nuclear fuel in MPC–68M canisters.

II. Request/Action

By letter dated November 9, 2016, as supplemented on January 9, 2017, Entergy submitted a request for an exemption from those provisions of 10 CFR 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.212(b)(11), and 72.214 that require compliance with the terms, conditions, and specifications of CoC No. 1014, Amendment No. 10, for the VYNPS to load and store certain low-enriched channeled undamaged fuel assemblies with higher enriched fuel assemblies in the same Holtec HI–STORM 100 MPC–68M canister.

III. Discussion

Pursuant to 10 CFR 72.7, the Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations of 10 CFR part 72 as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

The NRC staff prepared a safety evaluation report (SER) (ADAMS Accession No. ML17054C788) to document the evaluation of the proposed mixed-enrichment fuel loading arrangement to assure continued protection of public health and safety, common defense and security, and the environment. As summarized below, the NRC's safety review concludes that the requested exemption does not affect the ability of the cask system to meet the requirements of 10 CFR part 72.

[1] A method of decommissioning in which a nuclear facility is placed and maintained in a condition that allows the facility to be safely stored and subsequently decontaminated (deferred decontamination) to levels that permit release for unrestricted use.

A. The Exemption Is Authorized by Law

This exemption would permit the VYNPS to load and store certain low-enriched (up to 3.3 wt.% U–235) channeled BWR fuel assemblies classified as undamaged per CoC No. 1014, Amendment No. 10, in the same MPC with higher enriched (planar-average initial enrichment up to 4.8 wt.% U–235) BWR fuel assemblies. The provisions from which the NRC is granting the exemption require the VYNPS to follow the conditions of CoC No. 1014, Amendment No. 10, that when loading certain low-enriched channeled undamaged BWR fuel assemblies in an MPC–68M, all fuel assemblies in the same MPC are limited to 3.3 wt.% U–235 maximum planar-average initial enrichment.

Section 72.7 allows the Commission to grant exemptions from the requirements of 10 CFR part 72 if the exemption is authorized by law and will not endanger life or property nor the common defense and security. Issuance of this exemption is consistent with the Atomic Energy Act of 1954, as amended, and not otherwise inconsistent with NRC's regulations or other applicable laws. Therefore, issuance of the exemption is authorized by law.

B. The Exemption Presents No Undue Risk to Public Health and Safety

Approval of this exemption request will allow VYNPS to load and store certain low-enriched channeled undamaged BWR fuel assemblies in the same HI–STORM 100 MCP–68M canister, with higher enriched BWR fuel assemblies. As discussed in the SER and summarized in the following sections, the NRC staff finds that Entergy's proposed action is acceptable and will not endanger life or property.

Review of the Requested Exemption

The classification of certain low-enriched channeled BWR fuel as undamaged for the Holtec HI–STORM 100 system was reviewed previously and approved by the NRC in Amendment No. 9, Revision 1, on March 21, 2016. The CoC has a restriction that when loading certain low-enriched channeled undamaged BWR fuel (limited to 3.3 wt.% U–235), all fuels in the same MPC are limited to 3.3 wt.% U–235 maximum planar-average initial enrichment.

Entergy stated that the VYNPS has a large number of assemblies that fall into the category of low-enriched channeled undamaged BWR fuel. These assemblies can be mixed with higher enriched fuel in the same cask to reduce dose rates because placing the low-enriched

assemblies on the periphery of the cask acts as shielding and blocks the radiation from the higher-enriched fuels stored in the center of the cask. In order to reduce maximum dose rates from the casks for the decommissioning loading plan, Entergy is seeking an exemption from the loading restriction.

The NRC staff reviewed the requested exemption and determined that it does not change the fundamental design, components, or safety features of the storage system. The NRC staff evaluated the applicable potential safety impacts of granting the exemption to assess the potential for any danger to life or property or the common defense and security. Specifically, the NRC staff reviewed the applicant's criticality and shielding evaluations for the proposed exemption.

Criticality Review for the Requested Exemption: The NRC staff evaluated the adequacy of the description, methods, and analyses related to the criticality evaluation for the requested action to ensure that the storage of higher enrichments with low enriched channeled undamaged fuel in the same MPC–68M meets the criticality safety requirements of 10 CFR part 72. The NRC staff concludes that the HI–STORM 100 Cask System continues to meet the regulatory requirements that the dry cask storage system as modified will continue to remain subcritical under all credible normal, off-normal, and accident conditions and provide reasonable assurance for safe storage of spent fuel.

Shielding Review for the Requested Exemption: The objective of the review is to ensure that, with the exemption request, the VYNPS continues to provide adequate protection against direct radiation to the onsite operating workers and members of the public, and that the ISFSI continues to satisfy the regulatory requirements during normal operating, off-normal, and design-basis accident conditions. The NRC staff found that the mixing of lower enriched fuel (at 3.3 wt.% U–235) and higher enriched fuel (up to 4.8 wt.% U–235) reduced the overall dose rates. Therefore, the staff concludes that granting this exemption assures that the VYNPS ISFSI continues to satisfy the dose limits as specified in 10 CFR 72.104. It also provides benefit to the onsite workers and the public.

C. The Exemption Is Consistent With the Common Defense and Security

Review of Common Defense and Security: The NRC staff also considered potential impacts of granting the exemption on the common defense and security. The requested exemption is not related to any security or common defense aspect of the VYNPS ISFSI, therefore granting the exemption would not result in any potential impacts to common defense and security.

Based on its review, the NRC staff has determined that under the requested exemption, the storage system will continue to meet the safety requirements of 10 CFR part 72 and the offsite dose limits of 10 CFR part 20 and, therefore, will not endanger life or property. The NRC staff also finds that the exemption would not endanger common defense and security.

D. Otherwise in the Public Interest

In considering whether granting the exemption is in the public interest, the NRC staff considered the alternative of not granting the exemption. If the exemption was not granted, in order to comply with the CoC, when the VYNPS loaded certain low-enriched channeled undamaged BWR fuel, all fuels in the same MPC would be limited to 3.3 wt.% U–235 maximum planar-average initial enrichment.

Entergy stated that granting the exemption is in the public interest since it will reduce operational dose rate by loading certain low-enriched channeled undamaged BWR fuel with higher enriched BWR fuel in the same MPC, and NRC staff confirms this statement in Section B.6 of the SER. Additionally, granting the exemption would support VYNPS's cask loading schedule as part of its decommissioning effort.

The NRC staff concludes that allowing the VYNPS to load certain low-enriched channeled undamaged BWR fuel with higher enriched BWR fuel in the same MPC would continue to provide adequate protection of public health and safety. Therefore, granting the exemption is otherwise in the public interest.

E. Environmental Considerations

The NRC staff also considered whether there would be any significant environmental impacts associated with the exemption. For this proposed action, the NRC staff performed an environmental assessment pursuant to 10 CFR 51.30. The environmental assessment concluded that the proposed action would not significantly impact the quality of the human environment. The NRC staff concluded that the proposed action would not result in any changes in the types or amounts of any radiological or non-radiological effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure because of the proposed action. The Environmental Assessment and the Finding of No Significant Impact was published on June 6, 2017 (82 FR 26144).

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 72.7, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Entergy an exemption from those provisions of 10 CFR 72.212(a)(2), 10 CFR 72.212(b)(3), 10 CFR 72.212(b)(5)(i), 10 CFR 72.214, and the portion of 10 CFR 72.212(b)(11) that require compliance with terms, conditions, and specifications of the CoC No. 1014, Amendment No. 10, for the VYNPS to load and store certain low-enriched channeled undamaged fuel assemblies with higher enriched fuel assemblies in the same Holtec HI–STORM 100 MPC–68M canister.

V. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the methods indicated in the **ADDRESSES** section.

Document	ADAMS Accession No.
Entergy's exemption request, November 9, 2016	ML16319A102
Entergy's supplemental information, January 9, 2017	ML17010A300
Certificate of Compliance No. 1014, Amendment No. 10 for the HI–STORM 100 Cask System, dated May 25, 2016	ML16144A177
Vermont Yankee Nuclear Power Station Post-Shutdown Decommissioning Activities Report, December 29, 2014	ML14357A110
NRC's SER for the exemption request, dated May 26, 2017	ML17054C788
CoC and SER for Amendment No. 9, Revision 1, to CoC 1014 issued on March 21, 2016	ML16056A529
Environmental Assessment (82 FR 26144, June 6, 2017)	ML16343A859

The exemption is effective upon issuance.

Dated at Rockville, Maryland, this 6 day of June, 2017.

For the Nuclear Regulatory Commission.

John McKirgan,

Chief, Spent Fuel Licensing Branch, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2017–12270 Filed 6–13–17; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2017–144 and CP2017–203; MC2017–145 and CP2017–204; MC2017–146 and CP2017–205; MC2017–147 and CP2017–206]

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:* June 16, 2017.

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

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 Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2017–144 and CP2017–203; *Filing Title:* Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 43 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* June 8, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Katalin K. Clendenin; *Comments Due:* June 16, 2017.

2. *Docket No(s).:* MC2017–145 and CP2017–204; *Filing Title:* Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 44 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* June 8, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Katalin K. Clendenin; *Comments Due:* June 16, 2017.

3. *Docket No(s).:* MC2017–146 and CP2017–205; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 328 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* June 8, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Lawrence Fenster; *Comments Due:* June 16, 2017.

4. *Docket No(s).:* MC2017–147 and CP2017–206; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Express & Priority Mail Contract 49 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* June 8, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Lawrence Fenster; *Comments Due:* June 16, 2017.

This notice will be published in the **Federal Register**.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2017–12300 Filed 6–13–17; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80882; File No. SR–C2–2017–020]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Penny Pilot Program

June 8, 2017.

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 May 31, 2017, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of Penny Pilot Program through December 31, 2017. The text of the proposed rule change is provided below.

(additions are *in italics;* deletions are [bracketed])

* * * * *

C2 Options Exchange, Incorporated Rules

* * * * *

Rule 6.4. Minimum Increments for Bids and Offers

The Board of Directors may establish minimum quoting increments for options traded on the Exchange. When the Board of Directors determines to change the minimum increments, the Exchange will designate such change as a stated policy, practice, or interpretation with respect to the administration of this Rule within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act and will file a rule change for effectiveness upon filing with the Commission. Until such time as the Board of Directors makes a change to the minimum increments, the following minimum increments shall apply to options traded on the Exchange:

(1) No change.

(2) No change.

(3) The decimal increments for bids and offers for all series of the option classes participating in the Penny Pilot Program are: $0.01 for all option series quoted below $3 (including LEAPS), and $0.05 for all option series $3 and above (including LEAPS). For QQQQs, IWM, and SPY, the minimum increment is $0.01 for all option series. The Exchange may replace any option class participating in the Penny Pilot Program that has been delisted with the next most actively-traded, multiply-listed option class, based on national average daily volume in the preceding six calendar months, that is not yet included in the Pilot Program. Any replacement class would be added on the second trading day following [January 1, 2017]*July 1, 2017.* The Penny Pilot shall expire on [June 30, 2017]*December 31, 2017.* Also, for so long as SPDR options (SPY) and options on Diamonds (DIA) participate in the Penny Pilot Program, the minimum increments for Mini-SPX Index Options (XSP) and options on the Dow Jones Industrial Average (DJX), respectively, may be $0.01 for all option series quoting less than $3 (including LEAPS), and $0.05 for all option series quoting at $3 or higher (including LEAPS).

(4) No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*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 Penny Pilot Program (the ''Pilot Program'') is scheduled to expire on June 30, 2017. C2 proposes to extend the Pilot Program until December 31, 2017. C2 believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

During this extension of the Pilot Program, C2 proposes that it may replace any option class that is currently included in the Pilot Program and that has been delisted with the next most actively traded, multiply listed option class that is not yet participating in the Pilot Program (''replacement class''). Any replacement class would be determined based on national average daily volume in the preceding six months,[5] and would be added on the second trading day following July 1, 2017. C2 will announce to its Trading Permit Holders by circular any replacement classes in the Pilot Program. The Exchange notes that it intends to utilize the same parameters to prospective replacement classes as was originally approved.

C2 is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class.

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.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)8 requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed rule change allows for an extension of the Pilot Program for the benefit of market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 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 that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. In addition, the Exchange has been authorized to act jointly in extending the Pilot Program and believes the other exchanges will be filing similar extensions.

[5] The month immediately preceding a replacement class's addition to the Pilot Program (*i.e.,* June) would not be used for purposes of the six-month analysis. Thus, a replacement class to be added on the second trading day following July 1, 2017 would be identified based on The Option Clearing Corporation's trading volume data from December 1, 2016 through May 31, 2017.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] 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.

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing.[12] However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. Without a waiver of 30-day operative delay, CBOE's Pilot Program will expire before the extension of the Pilot Program is operative. The Commission believes that waiving the 30-day operative delay for the instant filing is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

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–C2–2017–020 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–C2–2017–020. 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 Web site (*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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2017–020 and should be submitted on or before July 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–12258 Filed 6–13–17; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80885; File No. SR–NYSEArca–2017–44]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade of Shares of the IQ Municipal Insured ETF, IQ Municipal Short Duration ETF, and IQ Municipal Intermediate ETF Under NYSE Arca Equities Rule 8.600

June 8, 2017.

I. Introduction

On April 20, 2017, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the IQ Municipal Insured ETF, IQ Municipal Short Duration ETF, and IQ Municipal Intermediate ETF (each a ''Fund,'' and collectively, the ''Funds'') under NYSE Arca Equities Rule 8.600. The Commission published notice of the proposed rule change in the **Federal Register** on May 9, 2017.[3] On May 9, 2017, the Exchange filed Amendment No. 1 to the proposed rule change and on May 31, 2017, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission received no

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 80584 (May 3, 2017), 82 FR 21573.

[4] In Amendment No. 1, which replaced the original filing in its entirety, the Exchange: (1) Clarified that each of the Adviser (as defined herein) and Subadviser (as defined herein) is not a registered broker-dealer but each is affiliated with a broker-dealer and each will maintain a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to each Fund's portfolio; (2) clarified that cash creations and redemptions will be the default mechanism for creation and redemption of Shares, and provided additional information relating to creation and redemption of Shares when a Fund utilizes in-kind creations and redemptions; (3) represented that upon the commencement of operations of a Fund, a copy of the Funds' prospectus will be available on the Funds' Web site in a form that may be downloaded; (4) provided additional information

comments on the proposed rule change. The Commission is approving the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto.

II. The Exchange's Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the IndexIQ Active ETF Trust (''Trust''), which is registered with the Commission as an open-end management investment company.[5] Each Fund is a series of the Trust. The investment adviser to each Fund will be IndexIQ Advisors LLC (''Adviser''), and MacKay Shields LLC will be each Fund's sub-adviser (''Subadviser'').[6] ALPS Distributors, Inc. will serve as the distributor of each Fund's Shares on an agency basis and the Bank of New York Mellon will serve as each Fund's administrator, custodian, transfer agent, and securities lending agent (''Administrator'').

The Exchange has made the following representations and statements in describing the Funds and their investment strategies, including each Fund's portfolio holdings and investment restrictions.[7]

A. The Exchange's Description of the Principal Investments of the Funds

According to the Exchange, for purposes of the filing, the term ''Municipal Bonds'' as applied to each of the Funds means the following:

- Municipal lease obligations (and certificates of participation in such obligations);
- municipal general obligation bonds (including industrial development bonds issued pursuant to federal tax law), which are issued for either project or enterprise financings in which the bond issuer pledges to the bondholders the revenues generated by the operating projects financed from the proceeds of the bond issuance;
- limited obligation bonds, which are payable only from the revenues derived from a particular facility or class of facilities or, in some cases from the proceeds of a special excise or other specific revenue source;
- municipal revenue bonds (which are typically secured by revenues generated by the issuer), including revenue anticipation notes;
- municipal bond anticipation notes (which are normally issued to provide interim financial assistance until long-term financing can be arranged);
- municipal bonds that feature credit enhancements, such as lines of credit, letters of credit, municipal bond insurance, and standby bond purchase agreements;
- discount municipal bonds (which may be originally issued at a discount to par value or sold at market price below par value);
- premium municipal bonds, which are sold at a premium to par value;
- zero coupon municipal bonds, which are issued at an original issue discount, with the full value, including accrued interest, paid at maturity;
- taxable municipal bonds, including Build America Bonds;
- municipal notes;
- municipal cash equivalents;
- private activity bonds (including without limitation industrial development bonds);
- pre-refunded and escrowed to maturity municipal bonds; and
- securities issued by entities whose underlying assets are Municipal Bonds (*i.e.,* tender option bond trusts and custodial receipts trusts and variable rate demand notes that pay interest monthly or quarterly based on a floating rate that is reset daily or weekly based on an index of short-term municipal rates).

For each Fund, the Subadviser's investment process will begin with an assessment of macro factors that may impact the municipal bond market, as well as other regulatory, tax, governmental, and technical factors that may impact the municipal bond market. Following the assessment of these factors, the Subadviser will develop an investment strategy to position a Fund among various sectors of the municipal bond market and different states. The Subadviser then will employ a fundamental, ''bottom-up'' credit research analysis to select individual Municipal Bonds.

(i) Principal Investments of the IQ Municipal Insured ETF

According to the Exchange, the Fund will seek current income exempt from federal income tax. The Fund, under normal market conditions,[8] will invest

regarding publicly available information relating to the Shares and each Fund's underlying investments; (5) clarified that less than 75% of the weight of a Fund's portfolio may consist of components with $100 million or more minimum original principal amount outstanding; (6) represented that trading in the Shares of the Funds will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted; and (7) made other non-substantive, technical amendments. Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nysearca-2017-44/nysearca201744-1745942-151492.pdf.* In Amendment No. 2, which replaced Amendment No. 1 in its entirety, the Exchange: (1) Clarified that each of the Adviser and Subadviser has implemented and will maintain a ''fire wall'' with respect to its broker-dealer affiliate regarding access to information concerning the composition of and/or changes to each Fund's portfolio; (2) represented that the quantitative information on the Funds' Web site relating to the Shares and relating to the underlying portfolio securities and other assets held by the Funds will be publicly available at no charge; (3) represented that trade price and other information relating to Municipal Bonds (as defined below) is available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (''EMMA'') system; and (4) made other clarifying and technical amendments. Amendment No. 2 is available at: *https://www.sec.gov/comments/sr-nysearca-2017-44/nysearca201744-1780627-152846.pdf.* Because Amendment Nos. 1 and 2 do not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment Nos. 1 and 2 are not subject to notice and comment.

[5] According to the Exchange, on February 24, 2017, the Trust filed with the Commission a registration statement on Form N–1A under the Securities Act of 1933 and the Investment Company Act of 1940 (''1940 Act'') relating to the Funds (File Nos. 333–183489 and 811–22739) (''Registration Statement''). According to the Exchange, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30198 (September 10, 2012) (File No. 812–13956).

[6] According to the Exchange, neither the Adviser nor Subadviser is a registered broker-dealer; however, each is affiliated with a broker-dealer. Each of the Adviser and Subadviser has implemented and will maintain a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to each Fund's portfolio. In the event (a) the Adviser or Subadviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser to a Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, the applicable adviser or sub-adviser will implement and maintain a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to a Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[7] The Commission notes that additional information regarding the Trust, the Funds, and the Shares, including investment strategies, risks, creation and redemption procedures, calculation of net asset value (''NAV''), fees, distributions, and taxes, among other things, is included in the proposed rule change, as modified by Amendment Nos. 1 and 2, and the Registration Statement, as applicable. *See* Amendment No. 2 and Registration Statement, *supra* notes 4 and 5, respectively.

[8] The term ''under normal market conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational 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 disruption or any similar intervening circumstance. On a temporary basis, including for defensive purposes, during the initial invest-up period (*i.e.,* the six-week period following the commencement of trading of Shares on the Exchange) and during periods of high cash inflows or outflows (*i.e.,* rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of a Fund's net assets as of the opening of business on the first day of such periods), a Fund

Continued

at least 80% of its assets in Municipal Bonds that are covered by insurance policies that guarantee the timely payment of principal and interest. The Fund generally will maintain a dollar-weighted average duration within plus or minus two years of the dollar-weighted average duration of the S&P Municipal Bond Insured Index.[9]

(ii) Principal Investments of the IQ Municipal Short Duration ETF

According to the Exchange, the Fund will seek current income exempt from federal income tax. The Fund, under normal market conditions, will invest at least 80% of its assets in Municipal Bonds. The Fund generally will maintain a dollar-weighted average portfolio duration of three years or less.

(iii) Principal Investments of the IQ Municipal Intermediate ETF

According to the Exchange, the Fund will seek current income exempt from federal income tax. The Fund, under normal market conditions, will invest at least 80% of its assets in Municipal Bonds. The Fund generally will maintain a dollar-weighted average duration within plus or minus two years of the dollar-weighted average duration of the S&P Municipal Bond Intermediate Index.

B. The Exchange's Description of the Other Investments of the Funds

With respect to each of the Funds, while a Fund, under normal market conditions, will invest at least 80% of its assets in Municipal Bonds, as described above, a Fund may invest its remaining assets in other assets and financial instruments, as described below.

Each Fund may invest in shares of exchange-traded funds (''ETFs'') and money market funds.[10] In addition, each Fund may invest, directly and indirectly, in fixed rate and floating rate U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities; repurchase agreements; and commercial paper; and may purchase securities on a when-issued basis or for settlement at a future date (forward commitment), if a Fund holds sufficient liquid assets to meet the purchase price (collectively, ''Other Investments'').

C. The Exchange's Description of the Funds' Investment Restrictions

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser, consistent with Commission guidance. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Each Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

Each Fund may invest more than 25% of its total assets in Municipal Bonds that are related in such a way that an economic, business or political development or change affecting one such security could also affect the other securities. However, a Fund's investments will be diversified among a minimum of ten different sectors of the municipal bond market.[11]

A Fund's investments will be diversified among at least 15 different states, with no more than 30% of a Fund's securities invested in municipal securities from a single state.

Under normal market conditions, no security (excluding Treasury securities) will represent more than 25% of the weight of the portfolio, and the five highest weighted securities will not, in the aggregate, account for more than 50% of the weight of a Fund. No Municipal Bond held by a Fund will exceed 5% of the weight of a Fund's portfolio and no single Municipal Bond issuer will account for more than 8% of the weight of a Fund's portfolio. A Fund will hold Municipal Bonds of a minimum of 25 non-affiliated issuers.[12]

D. The Exchange's Description of the Application of the Generic Listing Requirements to the Funds

The Exchange states that it is submitting the proposed rule change because the portfolios for the Funds will not meet all of the ''generic'' listing requirements of Commentary .01 to NYSE Arca Equities Rule 8.600 applicable to the listing of Managed Fund Shares. The Exchange states that each Fund's portfolio will meet all the requirements set forth in Commentary .01 to NYSE Arca Equities Rule 8.600 except for those set forth in Commentary .01(b)(1), which requires that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $100 million or more.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market

may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, a Fund may not be able to achieve its investment objectives. A Fund may adopt a defensive strategy when the Adviser believes securities in which a Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

[9] Municipal bonds are issued by or on behalf of the District of Columbia, states, territories, commonwealths, and possessions of the United States and their political subdivisions and agencies, authorities, and instrumentalities. Municipal securities, which may be issued in various forms, including bonds and notes, are issued to obtain funds for various public purposes.

[10] For purposes of the filing, ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The ETFs all will be listed and traded in the U.S. on registered exchanges.

[11] According to the Exchange, the IQ Municipal Insured ETF's investments in Municipal Bonds will include investments in state and local (*e.g.,* county, city, town) and authority-issued Municipal Bonds relating to such sectors as the following: State general obligation, local general obligation, education, hospital, housing, industrial development revenue/pollution control revenue, power, resource recovery, transportation, water/sewer, leasing, special tax, and pre-refunded bonds.

[12] For purposes of this restriction, each state and each separate political subdivision, agency, authority, or instrumentality of such state, each multi-state agency or authority, and each guarantor, if any, will be treated as separate issuers of Municipal Bonds.

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[15] which sets forth the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares and the underlying ETFs will be available via the Consolidated Tape Association (''CTA'') high-speed line, and from the national securities exchange on which they are listed.

The approximate value of each Fund's investments on a per-Share basis, the Indicative Intra-Day Value (''IIV'') (which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3)), will be disseminated every 15 seconds during the Exchange's Core Trading Session (ordinarily 9:30 a.m. to 4:00 p.m., Eastern Time) by one or more major market data vendors.[16] On each business day, before commencement of trading in Shares on the Exchange, each Fund will disclose on its Web site the identities and quantities of the portfolio securities and other assets held by each Fund (each Fund's ''Disclosed Portfolio,'' as defined in NYSE Arca Equities Rule 8.600(c)(2)) that will form the basis for the calculation of NAV at the end of the business day.[17] In addition, with respect to each Fund, the Administrator, through the National Securities Clearing Corporation, will make available on each business day immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time), the designated portfolio of securities and estimated cash component, if applicable, per each creation unit that will be applicable to creation and redemption requests on that day. The NAV of Shares of each Fund will normally be determined as of the close of the Core Trading Session on the Exchange (ordinarily 4:00 p.m., Eastern Time) on each business day.

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 publicly available and published daily in the financial section of newspapers. Quotation information from brokers and dealers or pricing services will be available for Municipal Bonds and Other Investments. Price information for money market funds will be available from the applicable investment company's Web site and from market data vendors. Pricing information regarding Municipal Bonds and Other Investments (other than money market funds) will generally be available through nationally recognized data service providers through subscription agreements. Trade price and other information relating to Municipal Bonds is available through the Municipal Securities Rulemaking Board's EMMA system. Upon the commencement of operations of a Fund, a copy of the Funds' prospectus will be available on the Funds' Web site (*www.IQetfs.com*) in a form that may be downloaded. In addition, the Funds' Web site will include additional data relating to NAV and other applicable quantitative information relating to the Shares.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share for each Fund will be calculated daily and that the NAV and the Disclosed Portfolio for each Fund will be made available to all market participants at the same time.[18] Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities 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.[19] Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which Shares of the Funds may be halted.

The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. In addition, Commentary .06 to NYSE Arca Equities Rule 8.600 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. The Exchange represents that the Adviser and Sub-Adviser are not registered as broker-dealers; however, each of the Adviser and the Sub-Adviser is affiliated with a broker-dealer, and each of the Adviser and Sub-Adviser has implemented and will maintain a fire wall with respect to their relevant personnel and each such broker-dealer affiliate regarding access to information concerning the composition of, and/or changes to, a portfolio.[20]

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[21] The Commission believes that the Exchange's initial and continued listing requirements, combined with the Funds' investment criteria and restrictions that would apply to Municipal Bonds in the portfolio, are designed to mitigate the potential for price manipulation of the Shares.

The Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

[15] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[16] The Exchange represents that several major market data vendors display and/or make widely available IIVs taken from CTA or other data feeds. According to the Exchange, the IIV for a Fund will be calculated by an independent third party calculator by dividing the ''Estimated Fund Value'' as of the time of the calculation by the total number of outstanding Shares of that Fund. ''Estimated Fund Value'' is the sum of the estimated amount of cash held in a Fund's portfolio, the estimated amount of accrued interest owed to a Fund, and the estimated value of the securities held in a Fund's portfolio, minus the estimated amount of a Fund's liabilities. The IIV will be calculated based on the same portfolio holdings disclosed on the Funds' Web site.

[17] On a daily basis, the Funds will disclose the information required under NYSE Arca Equities Rule 8.600 (c)(2) to the extent applicable. The Web site information will be publicly available at no charge.

[18] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[19] With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund.

[20] *See supra* note 6. The Exchange represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940.

[21] The Exchange states that 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.

In support of this proposal, the Exchange has made the following additional representations:

(1) The Shares of each Fund will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents 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.

(4) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and ETFs 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 in the Shares and ETFs from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and ETFs from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by a Fund reported to FINRA's Trade Reporting and Compliance Engine. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

(5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in a Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss: (a) The procedures for purchases and redemptions of Shares in creation unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (d) how information regarding the IIV and the Disclosed Portfolio is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information. In addition, the Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

(6) For initial and continued listing, a Fund will be in compliance with Rule 10A–3 under the Act,[22] as provided by NYSE Arca Equities Rule 5.3.

(7) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

(8) Each Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

(9) Under normal market conditions, each Fund will invest at least 80% of its assets in Municipal Bonds.

(10) Each Fund's investments will be diversified among a minimum of ten different sectors of the Municipal Bond market.

(11) Each Fund's investments will be diversified among at least 15 different states, with no more than 30% of a Fund's securities invested in municipal securities from a single state.

(12) Under normal market conditions, no security (excluding Treasury securities) will represent more than 25% of the weight of the portfolio of a Fund, and the five highest weighted securities will not, in the aggregate, account for more than 50% of the weight of a Fund.

(13) No Municipal Bond held by a Fund will exceed 5% of the weight of that Fund's portfolio, and no single Municipal Bond issuer will account for more than 8% of the weight of a Fund's portfolio.

(14) Each Fund will hold Municipal Bonds of a minimum of 25 non-affiliated issuers.

(15) Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser, consistent with Commission guidance. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid assets.

(16) The ETFs in which a Fund may invest will be listed and traded in the U.S. on registered exchanges.

The Exchange has represented that all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in the filing shall constitute continued listing requirements for listing the Shares of a Fund on the Exchange. The issuer has represented to the Exchange 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 Act, the Exchange will monitor for compliance with the continued listing requirements.[23] If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendment Nos. 1 and 2, and the Exchange's description of the Funds. The Commission notes that the Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be initially and continuously listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[24] and the rules and regulations thereunder applicable to a national securities exchange.

[22] 17 CFR 240.10A–3.

[23] The Commission notes that certain other proposals for the listing and trading of managed fund shares include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 78005 (Jun. 7, 2016), 81 FR 38247 (Jun. 13, 2016) (SR–BATS–2015–100). In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of the Funds' compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

[24] 15 U.S.C. 78f(b)(5).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–NYSEArca–2017–44), as modified by Amendment Nos. 1 and 2 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–12260 Filed 6–13–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80890; File No. SR–MSRB–2017–03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change To Amend MSRB Rule G–26, on Customer Account Transfers, To Modernize the Rule and Promote a Uniform Customer Account Transfer Standard

June 7, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 26, 2017 the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission a proposed rule change to amend MSRB Rule G–26, on customer account transfers, to modernize the rule and promote a uniform customer account transfer standard for all brokers, dealers, municipal securities brokers and municipal securities dealers (collectively, ''dealers'') (''proposed rule change'').[3] The MSRB requests that the proposed rule change be effective three months from the date of Commission approval.

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2017-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB 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 purpose of the proposed rule change is to modernize Rule G–26 and promote a uniform customer account transfer standard for all dealers. The MSRB believes that, by including certain provisions parallel to the customer account transfer rules of other SROs, particularly FINRA Rule 11870, in current Rule G–26, as outlined below, the transfer of customer securities account assets will be more flexible, less burdensome, and more efficient, while reducing confusion and risk to investors and allowing them to better move their municipal securities to their dealer of choice.

Current Rule G–26

Rule G–26 requires dealers to cooperate in the transfer of customer accounts and specifies procedures for carrying out the transfer process. Such transfers occur when a customer decides to transfer an account from one dealer, the carrying party (*i.e.,* the dealer from which the customer is requesting the account be transferred) to another, the receiving party (*i.e.,* the dealer to which the customer is requesting the account be transferred). The rule establishes specific time frames within which the carrying party is required to transfer a customer account; limits the reasons for which a receiving party may take exception to an account transfer instruction; provides for the establishment of fail-to-receive and fail-to-deliver contracts; [4] and requires that fail contracts be resolved in accordance with MSRB close-out procedures, established by MSRB Rule G–12(h). In addition, the current rule requires the use of the automated customer account transfer service in place at a registered clearing agency registered with the Commission when both dealers are direct participants in the same clearing agency.[5] Finally, the rule contains a provision for enhancing compliance by requiring submission of transfer instructions to the enforcement authority with jurisdiction over the dealer carrying the account, if the enforcement authority requests such submission.[6]

The MSRB adopted Rule G–26 in 1986 as part of an industry-wide initiative to create a uniform customer account transfer standard by applying a customer account transfer procedure to all dealers that are engaged in municipal securities activities.[7] The uniform standard for all customer account transfers (*i.e.,* automated and manual processes) is largely driven by the National Securities Clearing Corporation's (''NSCC'') Automated Customer Account Transfer Service (''ACATS''). The MSRB adopted Rule G–26 in conjunction with the adoption of similar rules by other self-regulatory organizations (''SROs'')—New York Stock Exchange (''NYSE'') Rule 412 and Financial Industry Regulatory Authority (''FINRA'') Rule 11870.[8] Those rules are not applicable to certain accounts at dealers, particularly municipal security-only accounts and accounts at bank dealers.[9] Current Rule G–26 governs the municipal security-only customer account transfers performed by those

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For clarity and ease of reference, current provisions of Rule G–26 will be cited herein as ''Rule G–26,'' and proposed amendments to Rule G–26 will be cited herein as ''proposed Rule G–26''.

[4] Fail-to-receive and fail-to-deliver contracts are records maintained by the receiving party and the carrying party, respectively, when a customer account transfer fails.

[5] *See* Rule G–26(h).

[6] *See* Rule G–26(i).

[7] *See* Exchange Act Release No. 22810 (Jan. 17, 1986), 51 FR 3287 (Jan. 24, 1986) (SR–MSRB–86–2) (proposing Rule G–26). *See also* Exchange Act Release Nos. 22663 (Nov. 27 1985) (SR–NYSE–85–17) (approving NYSE Rule 412); 22941 (Feb. 24, 1986) (SR–NASD–29) (approving NASD/FINRA Rule 11870).

[8] In 2007, FINRA was created through the consolidation of the National Association of Securities Dealers (''NASD'') and the member regulation, enforcement and arbitration operations of the NYSE. Current NYSE Rule 412 cross-references NASD/FINRA Rule 11870 for the purpose of incorporating it into the NYSE rulebook.

[9] *See* Exchange Act Release No. 22810 (Jan. 17, 1986), 51 FR 3287 (Jan. 24, 1986) (SR–MSRB–86–2) (''Currently certain municipal securities brokers or municipal securities dealers, particularly those with municipal security-only accounts and bank dealers, will not be covered by the standards governing the rest of the securities industry.'').

dealers to ensure that all customer account transfers are subject to regulation that is consistent with the uniform industry standard. Thus, in order to maintain consistency and the uniform standard, the MSRB has, from time to time, modified the requirements of Rule G–26 to conform to certain provisions of the parallel FINRA and NYSE customer account transfer rules, as well as to enhancements made to the ACATS process by NSCC, that had relevance to municipal securities.

On January 6, 2017, the MSRB published a request for comment, proposing a number of draft amendments to Rule G–26 to maintain consistency with the rules of the NSCC, the NYSE and FINRA by conforming to significant updates to those other SRO rules that have relevance to municipal securities and municipal security-only customer account transfers.[10] In response to the Request for Comment, the MSRB received three comment letters, supporting the general purpose of the amendments to Rule G–26, but suggesting alternative approaches and raising a few other issues.[11] After carefully considering all of the comments received, the MSRB determined to file this proposed rule change.

Residual Credit Positions

In 1989, the NSCC expanded ACATS to include the transfer of customer account residual credit positions. These are assets in the form of cash or securities that can result from dividends, interest payments or other types of assets received by the carrying party after the transfer process is completed, or which were restricted from being included in the original transfer.[12] The NYSE and FINRA made corresponding changes to their rules that require dealers that participate in a registered clearing agency with automated residual credit processing capabilities to utilize those facilities to transfer residual credit positions that accrue to an account after a transfer.[13] Prior to allowing for these transfers, a check frequently would have to be produced, or a delivery bill or report, which then required a check to be issued or securities to be transferred.[14] This process could result in lost or improperly routed checks and securities, as well as the expenses of postage and processing.[15]

The MSRB is proposing to update Rule G–26 to include the transfer of customer account residual credit positions, which would benefit both customers and dealers by substantially decreasing the paperwork, risks, inefficiencies and costs associated with the practice of check issuance and initiation of securities deliveries to resolve residual credit positions.[16]

Partial Account Transfers

In 1994, the NYSE and FINRA amended their rules to permit partial or non-standard customer account transfers (*i.e.,* the transfer of specifically designated assets from an account held at one dealer to an account held at another dealer).[17] Subsequently, in 2004, the NYSE and FINRA further amended their rules generally to apply the same procedural standards and time frames that are applicable to the transfer of entire accounts to partial transfers as well.[18] Because customer and dealer obligations resulting from the transfer of an entire account differ from the obligations arising from the transfer of specified assets within an account that will remain active at the carrying party, the NYSE and FINRA rules distinguish between the transfer of security account assets in whole or in specifically designated part. For example, it would not be necessary for a customer to instruct the carrying party as to the disposition of his or her assets that are nontransferable if the customer is not transferring the entire account.

The MSRB is proposing to update Rule G–26 to permit partial account transfers under the same time frames applicable to transfers of entire accounts, which the MSRB believes would provide dealers with the ability to facilitate more efficient and expeditious transfers, as well as increase accountability for dealers and reduce difficulties encountered by customers related to transfers.[19] The MSRB also believes this change will further competition among dealers by more easily allowing investors to transfer their municipal securities to the dealer of their choice.

Transfer of Third-Party and/or Proprietary Products

In 1998, the NSCC modified ACATS to better facilitate and expedite the transfer of a customer account containing third-party and/or proprietary products that the receiving party is unable to receive or carry.[20] The NYSE and FINRA made conforming changes in 2001.[21] Prior to the NSCC's modernization of ACATS in 1998, a receiving party was not permitted to reject an individual account asset and only could reject an account in its entirety. Today, however, under these other SROs' rules, the receiving party has the capability to either accept all assets in the account being transferred or, to the extent permitted by the receiving party's designated examining authority, accept only some of the assets in the account.[22]

Although most securities can be transferred, dealers vary in their ability to accept and support certain third-party investment products. Under the NSCC's prior customer account transfer procedures, and the current procedures outlined in Rule G–26, a customer that wishes to transfer its entire account to another dealer would submit a signed transfer instruction to the receiving party.[23] The receiving party would immediately submit the transfer instruction to the carrying party, and the carrying party would have three days to either validate and return the transfer instruction or take exception to the instruction.[24] Prior to or at the time of validation of the transfer instruction, the carrying party would be required to notify the customer with respect to the disposition of any assets it identified as nontransferable [25] and request

[10] MSRB Notice 2017–01 (Jan. 6, 2017) (''Request for Comment'').

[11] *See infra* note 81.

[12] *See* Exchange Act Release No. 26659 (Mar. 22, 1989), 54 FR 12984 (Mar. 29, 1989) (SR–NSCC–89–3).

[13] *See* Exchange Act Release Nos. 34633 (Sept. 2, 1994), 59 FR 46872 (Sept. 12, 1994) (SR–NYSE–94–21); 35031 (Nov. 30, 1994), 59 FR 62761 (Dec. 6, 1994) (SR–NASD–94–56). *See also* former NYSE Rule 412(e)(3); FINRA Rule 11870(m)(3).

[14] *See* Exchange Act Release No. 26659 (Mar. 29, 1989) (SR–NSCC–89–3).

[15] *Id.*

[16] *See* proposed Rule G–26(k)(ii).

[17] *See* Exchange Act Release Nos. 34633 (Sept. 2, 1994), 59 FR 46872 (Sept. 12, 1994) (SR–NYSE–94–21); 35031 (Nov. 30, 1994), 59 FR 62761 (Dec. 6, 1994) (SR–NASD–94–56). *See also* former NYSE Rule 412, Interpretation (a)/01; FINRA Rule 11870(a)(2).

[18] *See* Exchange Act Release Nos. 49415 (Mar. 12, 2004), 69 FR 13608 (Mar. 23, 2004) (SR–NYSE–2003–29); 50018 (July 14, 2004), 69 FR 43873 (July 22, 2004) (SR–NASD–2004–058).

[19] *See* proposed Rule G–26(b), (c)(ii), (d)(i), (e)(ii), (k)(i). The proposed rule change would require that dealers expedite all authorized municipal securities account asset transfers, whether through ACATS or via other means permissible, and coordinate their activities with respect thereto.

[20] *See* Exchange Act Release No. 40657 (Nov. 10, 1998), 63 FR 63952 (Nov. 17, 1998) (SR–NSCC–98–06).

[21] *See* Exchange Act Release Nos. 44596 (July 26, 2001), 66 FR 40306 (Aug. 2, 2001) (SR–NYSE–00–61); 44787 (Sept. 12, 2001), 66 FR 48301 (Sept. 19, 2001) (SR–NASD–2001–53). *See also* former NYSE Rule 412, Interpretation (b)(1),/01,/04,/06; FINRA Rule 11870(c)(2).

[22] *See* FINRA Rule 11870(c)(3)–(4).

[23] *See* Rule G–26(d)(i).

[24] *Id.*

[25] Currently, the term ''nontransferable asset'' means an asset that is incapable of being transferred from the carrying party to the receiving party because (A) it is an issue in default for which the carrying party does not possess the proper

instructions from the customer with respect to their disposition.[26]

A customer account could also contain assets that are nontransferable but have not yet been identified as nontransferable (*e.g.,* a municipal fund security that the receiving party is unable to carry—unbeknownst to the carrying party). Under current Rule G–26, the carrying party would have to include such nontransferable assets in the transfer of the account, and, if the receiving party were unable to receive/carry the nontransferable asset, the receiving party would have to send the asset back to the carrying party.[27] While the instances in which dealers would need to rely upon Rule G–26 and the special procedures for transfer of nontransferable assets may be rare, these fails require substantial processing time for both the carrying and receiving parties, and require carrying parties to credit the receiving party's funds equivalent to the value of the assets they are unable to deliver. These fails can also cause customers confusion in that customers receive multiple account statements from the carrying and receiving parties as the dealers initiate and then reverse transfers.

The NSCC's modifications regarding third-party and proprietary products allow the receiving party to review the asset validation report, designate those nontransferable assets it is unable to receive/carry, provide the customer with a list of those assets, and require instructions from the customer regarding their disposition.[28] The proposed rule change would make Rule G–26 consistent with this change by requiring the receiving party to designate any third-party products it is unable to receive.[29] Accordingly, the MSRB believes the proposed rule change will eliminate the present need for reversing the transfer of nontransferable assets, reduce the overall time frame for transferring third-party products, and generally reduce delay in and the cost of customer account transfers.

Electronic Signature for Customer Authorization of Account Transfer

Under current Rule G–26, a customer can initiate a transfer of a municipal securities account from one dealer to another by giving written notice to the receiving party.[30] NYSE Rule 412 and FINRA Rule 11870 previously had the same requirement; however, in 2004, the NYSE and FINRA established that a customer also can initiate an account transfer, in whole or in part, using either the customer's actual signature or an electronic signature in a format recognized as valid under federal law to conduct interstate commerce.[31] The MSRB believes that updating the written notice requirement in Rule G–26 to include electronic signatures will expedite the transfer of customer assets between dealers and more easily allow investors to transfer their assets to the dealer of their choice. Accordingly, the MSRB is proposing to replace the written notice requirement with an authorized instruction requirement, which can be a customer's actual written or electronic signature.[32]

Shortened ACATS Cycle

ACATS has been modified over time to provide a more seamless and timely customer account transfer process. Specifically, in 1994, the NSCC accelerated the time (from two days to one day) in which accounts are transferred by reducing the time a receiving party has after receipt of the transfer instruction to determine whether to accept, reject or request adjustments to the account.[33] In 1998 and 2000, the NYSE and FINRA, respectively, shortened the time frame for the asset review portion of the transfer period from two days to one day, and the time frame the carrying party has to complete the transfer of customer securities account assets to the receiving party from four days to three days following the validation of a transfer instruction.[34] Further, in 2007, FINRA more generally provided that the time frame(s) in FINRA Rule 11870 will change, as determined from time to time in any publication, relating to the ACATS facility, by the NSCC.[35] Rule G–26 currently specifies three days as the time to validate or take exception to the transfer instructions and four days as the time frame for completion of a customer account transfer.[36] The MSRB believes that reducing those time frames to one and three day(s), respectively, will ensure consistency with the industry standard set by the NSCC and harmonization with other SROs, while providing greater efficiency and improving the customer experience in the customer account transfer process.[37] Therefore, the proposed rule change would shorten the time for validation from three days to one, and shorten the time for completing the customer account transfer from four days to three.

Because Rule G–26 applies to manual customer account transfers, in addition to automated processes, the MSRB is, at this time, not incorporating by reference changes in the time frame of the transfer cycle as determined by future changes in the ACATS time frames made by the NSCC. The MSRB believes that the current time frames are sufficiently long to accommodate manual processes, but it would be important for the MSRB to evaluate the ability of bank dealers and other dealers with municipal securities-only accounts, which are subject to Rule G–26, to perform such processes under shorter time frames before adopting any such proposal in the future.

Definition of ''Nontransferable Asset''

In response to a specific question in the Request for Comment,[38] the Securities Industry and Financial Markets Association (''SIFMA'') indicated that dealers may sell proprietary products that are municipal securities to customers, the transferability of which FINRA Rule 11870 addresses.[39] Given this affirmative response, and because a receiving party cannot hold a proprietary product of a carrying party, the MSRB believes it is important to include proprietary products of the carrying party in the definition of ''nontransferable asset'' to better harmonize with FINRA's corresponding definition and to ensure that bank dealers, and other dealers subject to Rule G–26, have clarity when handling

denominations to effect delivery and no transfer agent is available to re-register the securities, or (B) it is a municipal fund security which the issuer requires to be held in an account carried by one or more specified dealers that does not include the receiving party. *See* Rule G–26(a)(iii).

[26] *See* Rule G–26(c)(ii).

[27] *See* Rule G–26(d)(i)–(ii).

[28] *See* NSCC Rule 50 Section 8.

[29] *See* proposed Rule G–26(e)(vii).

[30] Under Rule G–26(c)(i), customers and dealers may use Form G–26 (the transfer instruction prescribed by the MSRB), the transfer instructions required by a clearing agency registered with the SEC in connection with its automated customer account transfer system or transfer instructions that are substantially similar to those required by such clearing agency to accomplish a customer account transfer.

[31] *See* Exchange Act Release Nos. 49415 (Mar. 12, 2004), 69 FR 13608 (Mar. 23, 2004) (SR–NYSE–2003–29); 50018 (July 14, 2004), 69 FR 43873 (July 22, 2004) (SR–NASD–2004–058).

[32] *See* Supplementary Material .01 to proposed Rule G–26.

[33] *See* Exchange Act Release No. 34879 (Oct. 21, 1994), 59 FR 54229 (Oct. 28, 1994) (SR–NSCC–94–13).

[34] *See* Exchange Act Release Nos. 40712 (Nov. 25, 1998), 63 FR 67163 (Dec. 4, 1998) (SR–NYSE–98–30); 43635 (Nov. 29, 2000), 65 FR 75990 (Dec. 5, 2000) (SR–NASD–00–68). *See also* former NYSE Rule 412(b)(3); FINRA Rule 11870(e).

[35] *See* Exchange Act Release No. 56677 (Oct. 19, 2007), 72 FR 60699 (Oct. 25, 2007) (SR–FINRA–2007–005).

[36] *See* Rule G–26(d)(i), (v).

[37] *See* proposed Rule G–26(d)(i), (f)(i).

[38] *See* Request for Comment, Question 8 (''Do municipal securities brokers or municipal securities dealers sell proprietary products that are municipal securities to customers?'').

[39] *See* letter from SIFMA at note 81 *infra.*

such proprietary products in customer account transfers.[40] Accordingly, the proposed rule change would also provide the following options for the disposition of such proprietary products that would be nontransferable assets: Liquidation; retention by the carrying party for the customer's benefit; or transfer, physically and directly, in the customer's name to the customer.[41]

Transfer Instructions

Disposition of Nontransferable Assets

Under current Rule G–26, if there are nontransferable assets included in a transfer instruction, there are multiple options available to the customer for their disposition, and the carrying party must request further instructions from the customer with respect to which option the customer would like to exercise.[42] Depending on the type of nontransferable asset at issue, FINRA Rule 11870(c) requires either the carrying party or the receiving party to provide the customer with a list of the specific nontransferable assets and request the customer's desired disposition of such assets. For example, FINRA Rule 11870(c)(4) places the burden on the receiving party for third-party products that are nontransferable. In response to the Request for Comment, SIFMA noted that current industry practice and standard requires that, depending on the type of nontransferable asset, either the carrying party or the receiving party provide the customer with a list of the nontransferable assets and request the customer's desired disposition of such assets, as opposed to limiting that requirement to the carrying party, which was proposed in the Request for Comment.[43] Because there are third-party products that are municipal securities that a receiving party may not be able to carry, and such a receiving party may be the only party to a customer account transfer with that knowledge, the MSRB believes allowing the receiving party to notify the customer of any nontransferable assets in a transfer and request their disposition in such circumstances will help ensure that nontransferable assets are properly identified and that both parties to a transfer are coordinating closely to complete the transfer efficiently and expeditiously. To allow for this, to improve harmonization with FINRA Rule 11870 and to promote a uniform standard for all dealers, the proposed rule change would explicitly require that the carrying party *and/or* the receiving party provide the list of nontransferable assets.[44]

Liquidation of Nontransferable Assets

Under current Rule G–26, one of the disposition options for nontransferable assets available to customers is liquidation.[45] When providing customers with this option, dealers are required to specifically indicate any redemption or other liquidation-related fees that may result from such liquidation and that those fees may be deducted from the money balance due the customer.[46] FINRA Rule 11870 provides the same requirements, but also requires dealers to refer customers to the disclosure information for third-party products or to the registered representative at the carrying party for specific details regarding any such fees, as well as to distribute any remaining balance to the customer and an indication of the method of how it will do so.[47] The MSRB believes the inclusion of these additional requirements in Rule G–26 will help ensure that customers receive as much relevant information as possible regarding potential redemption fees, including for municipal fund securities.[48] Specifically, the proposed rule change would require a referral to the program disclosure for a municipal fund security or to the registered representative for specific details regarding any such fees for the same.[49] Further, for clarity, the MSRB believes it is important to require explicitly the distribution of the remaining balance to the customer and an indication of how it will be accomplished.[50] Therefore, the proposed rule change would require dealers to specifically indicate any redemption or other liquidation-related fees that may result from liquidation and that those fees may be deducted from the money balance due the customer.

Transfer of Nontransferable Assets to Customers

FINRA Rule 11870(c)(3)(C) provides an option for nontransferable assets that are proprietary products to be transferred, physically and directly, in the customer's name to the customer. The MSRB believes that some municipal securities that are nontransferable assets could similarly be transferred, physically and directly, to the customer, so the proposed rule change would add this option to the alternative dispositions available to customers.[51] The MSRB notes that not all municipal securities may be appropriate for this option and that the carrying party would not be required to physically deliver any nontransferable assets of which it does not have physical possession.

Timing of Disposition of Nontransferable Assets

Rule G–26 currently does not provide a time frame for the carrying party to effect the disposition of nontransferable assets as instructed by the customer. FINRA Rule 11870(c)(5) requires that the money balance resulting from liquidation must be distributed, and any transfer instructed by the customer must be initiated, within five business days following receipt of the customer's disposition instruction. The MSRB believes it is important to provide clarity as to the timing of these dispositions to ensure that customer transfers are handled expeditiously. Accordingly, the proposed rule change would harmonize with FINRA Rule 11870(c)(5) and establish the same five-day requirement.[52]

Transfer Procedures

Current Rule G–26(d) establishes, as part of the transfer procedures, the requirements for validation of the transfer instructions and completion of the transfer. To detail the specific validation/exception and completion processes more clearly and to better harmonize with FINRA Rule 11870, the proposed rule change would provide the provisions describing those processes in new, separate sections of the rule.[53]

Validation of Transfer Instructions

Under current Rule G–26(d)(iv)(A), upon validation of a transfer instruction, the carrying party must ''freeze'' the account to be transferred and return the transfer instruction to the receiving party with an attachment indicating all securities positions and money balance in the account as shown on the books of the carrying party. Because the proposed rule change would allow for partial account transfers of specifically designated municipal securities assets, the proposed rule change would require the account freeze only for validation of the transfer of an entire account, as the

[40] *See* proposed Rule G–26(a)(iii)(C); FINRA Rule 11870(c)(1)(D)(i).

[41] *See* proposed Rule G–26(c)(ii)(A)–(C).

[42] *See* Rule G–26(c)(ii).

[43] *See* letter from SIFMA at note 81 *infra.*

[44] *See* proposed Rule G–26(c)(ii).

[45] *See* Rule G–26(c)(ii).

[46] *See* Rule G–26(c)(ii)(A).

[47] *See* FINRA Rule 11870(c)(3)(A), (c)(4)(A).

[48] *See* proposed Rule G–26(c)(ii)(A).

[49] *Id.*

[50] *Id.*

[51] *See* proposed Rule G–26(c)(ii)(C).

[52] *See* proposed Rule G–26(c)(iii).

[53] *See* proposed Rule G–26(e), (f). As a result of this restructuring, the subsequent, existing sections of the rule would be renumbered in proposed Rule G–26.

customer's account at the carrying party should not be frozen if certain municipal securities would remain in the account and the customer may want to continue transacting in that account.[54] For whole and partial account transfers, the carrying party would continue to have the responsibility to return the instructions and indicate the securities positions and money balance to be transferred.[55] However, to identify the assets held in the customer account at the carrying party more comprehensively and to harmonize with FINRA Rule 11870(d)(5)(A), the proposed rule change would also require the carrying party to indicate safekeeping positions,[56] which are defined to be any security held by a carrying party in the name of the customer, including securities that are unendorsed or have a stock/bond power attached thereto.[57]

Additionally, current Rule G–26(d)(iv)(B) requires the carrying party to include a then-current market value for all assets to be transferred. FINRA Rule 11870(d)(5) provides that the original cost should be used as the value if a then-current value cannot be determined for an asset. The proposed rule change would include a provision substantially similar to the FINRA provision to provide clarity on how any such municipal securities should be valued and to improve harmonization between the MSRB and FINRA rules.[58]

Exceptions To Transfer Instructions

As part of the validation process, current Rule G–26 provides that the carrying party may take certain exceptions to the transfer instructions authorized by the customer and provided by the receiving party. Specifically, Rule G–26(d)(ii) allows a carrying party to take exception to a transfer instruction only if it has no record of the account on its books or the transfer instruction is incomplete.[59] FINRA Rule 11870(d)(3) provides numerous other bases to take exception to a transfer instruction that the MSRB believes would more comprehensively address potential issues with a transfer instruction with which a carrying party could reasonably take issue and better harmonize with FINRA Rule 11870. Accordingly, in addition to the existing bases for exceptions, the proposed rule change would allow a carrying party to take exception to a transfer instruction if: (1) The transfer instruction contains an improper signature; (2) additional documentation is required (*e.g.,* legal documents such as death or marriage certificate); (3) the account is ''flat'' and reflects no transferable assets; [60] (4) the account number is invalid (*i.e.,* the account number is not on the carrying party's books); [61] (5) it is a duplicate request; (6) it violates the receiving party's credit policy; (7) it contains unrecognized residual credit assets (*i.e.,* the receiving party cannot identify the customer); (8) the customer rescinds the instruction (*e.g.,* the customer has submitted a written request to cancel the transfer); (9) there is a mismatch of the Social Security Number/Tax ID (*e.g.,* the number on the transfer instruction does not correspond to that on the carrying party's records); (10) the account title on the transfer instruction does not match that on the carrying party's records; (11) the account type on the transfer instruction does not correspond to that on the carrying party's records; (12) the transfer instruction is missing or contains an improper authorization (*e.g.,* the transfer instruction requires an additional customer authorization or successor custodian's acceptance authorization or custodial approval; or (13) the customer has taken possession of the assets in the account (*e.g.,* the municipal securities account assets in question have been transferred directly to the customer).[62]

Additionally, FINRA Rule 11870(d)(2) precludes a carrying party from taking an exception and denying validation of the transfer instruction because of a dispute over security positions or the money balance in the account to be transferred, and it requires the carrying party to transfer the positions and/or money balance reflected on its books for the account. The MSRB believes this provision will be equally valuable to transfers covered under Rule G–26 to ensure that customers are able to hold their municipal securities at their dealers of choice.[63]

Recordkeeping and Customer Notification

During the validation process for a customer account transfer, there is a risk that the parties to the transfer fail to identify certain nontransferable assets, resulting in the improper transfer of those assets. FINRA Rule 11870(c)(1)(E) explicitly requires that the parties promptly resolve and reverse any such misidentified nontransferable assets, update their records and bookkeeping systems and notify the customer of the action taken. The MSRB believes it is important to add this explicit requirement to Rule G–26 to ensure that dealers address any errors in the transfer process promptly.[64] Therefore, the proposed rule change would require that the parties promptly resolve and reverse any such misidentified nontransferable assets, update their records and bookkeeping systems and notify the customer of the action taken.

Transfer Rejection

FINRA Rule 11870(d)(8) allows the receiving party to reject a full account transfer if the account would not be in compliance with its credit policies or minimum asset requirements. A receiving party may not reject only a portion of the account assets (*i.e.,* the particular assets not in compliance with the dealer's credit policies or minimum asset requirement). Rule G–26 currently does not include any comparable provisions, but the MSRB believes it is reasonable for a receiving party to deny a customer's transfer request due to noncompliance with its credit policies or minimum asset requirements. Accordingly, the proposed rule change would provide this ability to the receiving party in Rule G–26.[65]

Resolution of Discrepancies

Rule G–26(f) currently provides that any discrepancies relating to positions or money balances that exist or occur after transfer of a customer account must be resolved promptly.[66] FINRA Rule 11870(g) includes the same standard but also requires that the carrying party must promptly distribute to the receiving party any transferable assets that accrue to the customer's transferred account after the transfer has been effected. Further, FINRA Rule 11870(g) provides clarity to the promptness requirement by requiring

[54] *See* proposed Rule G–26(e)(i).

[55] *See* proposed Rule G–26(e)(ii).

[56] *See* proposed Rule G–26(e)(ii).

[57] *See* proposed Rule G–26(a)(vi).

[58] *See* proposed Rule G–26(e)(ii).

[59] *See* Rule G–26(d)(ii).

[60] For such an exception, the receiving party would have to resubmit the transfer instruction only if the most recent customer statement is attached. *See* proposed Rule G–26(e)(v).

[61] If the carrying party has changed the account number for purposes of internally reassigning the account, it would be the responsibility of the carrying party to track the changed account number, and such reassigned account number would not be considered invalid for purposes of fulfilling a transfer instruction. *See* proposed Rule G–26(e)(iv)(F).

[62] In order to include the exceptions to transfer instructions with the provisions related to validation, the proposed rule change would move the existing exceptions to, and add the new exceptions in, the new, separate section on validation of transfer instructions. *See* proposed Rule G–26(e)(iv).

[63] *See* proposed Rule G–26(e)(iii).

[64] *See* proposed Rule G–26(e)(vi).

[65] *See* proposed Rule G–26(e)(viii).

[66] *See* Rule G–26(f).

that any claims of discrepancies after a transfer must be resolved within five business days from notice of such claim or the non-claiming party must take exception to the claim and set forth specific reasons for doing so. To provide the same level of clarity and to improve harmonization with FINRA Rule 11870(g), the proposed rule change would include these same additional provisions.[67]

Participant in a Registered Clearing Agency

When both the carrying party and the receiving party are direct participants in a clearing agency that is registered with the SEC and offers automated customer securities account transfer capabilities, Rule G–26(h) currently requires the account transfer procedure to be accomplished pursuant to the rules of and through such registered clearing agency.[68] FINRA Rule 11870(m) has a similar requirement that provides an exception for specifically designated securities assets transferred pursuant to the submittal of a customer's authorized alternate instructions to the carrying party. As discussed above, FINRA Rule 11870(m)(3) also requires the transfer of residual credit positions through the registered clearing agency. Further, FINRA Rule 11870(m)(4) prescribes several conditions for such transfers for participants in a registered clearing agency.[69] The MSRB believes customers and the parties to a customer account transfer should have the option of performing the transfer outside of the facilities of a registered clearing agency when an appropriate authorized alternate instruction is given. Additionally, the MSRB believes the additional prescription related to the process provided by FINRA will give greater clarity to customers and dealers. Accordingly, the proposed rule change would include these provisions.[70]

Transfer of Residual Positions

When both the carrying party and the receiving party are direct participants in a clearing agency registered with the SEC offering automated customer securities account transfer capabilities, FINRA Rule 11870(n) requires each party to transfer credit balances that occur in any transferred account assets (both cash and securities) through the automated service within 10 business days after the credit balances accrue to the account for a minimum period of six months. Given that the majority of customer account transfers subject to Rule G–26 occur manually, the MSRB believes it is important to provide clarity on the obligation and timing required to transfer such credit balances for any customer account transfer, so the proposed rule change would include a provision with the same 10-business-day requirement as FINRA Rule 11870(n) that is not limited to when both parties are direct participants in a clearing agency registered with the SEC offering automated customer securities account transfer capabilities.[71]

Written Procedures

Current Rule G–26 does not itself include any requirement for policies and procedures, but Supplementary Material .01 to FINRA Rule 11870 requires the establishment, maintenance and enforcement of written procedures to affect and supervise customer account transfers. The MSRB believes it is important for dealers to document the procedures they follow to effect customer account transfers and to require explicitly written procedures for supervision of the same, which is consistent with MSRB Rule G–27, on supervision. Accordingly, the proposed rule change would include such a requirement.[72]

FINRA Rule 11650—Transfer Fees

Neither current Rule G–26 nor any other MSRB rule specifically addresses transfer fees. However, FINRA Rule 11650, on transfer fees, specifies that the party at the instance of which a transfer of securities is made shall pay all service charges of the transfer agent. The MSRB believes it is important to clarify which party is responsible for the fees incurred for a customer account transfer. Accordingly, the proposed rule change would include a provision identical to FINRA Rule 11650.[73]

2. Statutory Basis

Section 15B(b)(2) of the Act[74] provides that:

> [t]he Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Act[75] provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with the provisions of Sections 15B(b)(2)[76] and 15B(b)(2)(C)[77] of the Act because it would re-establish consistency with the customer account transfer rules of other SROs by conforming to significant updates by the NSCC, the NYSE and FINRA that have relevance to municipal securities. Further, the MSRB believes that including certain provisions from the other rules in the proposed rule change will make the transfer of customer securities account assets more flexible, less burdensome, and more efficient, while reducing confusion and risk to investors and allowing them to better move their securities to their dealer of choice. The MSRB believes the proposed rule change will promote fairness and provide greater efficiency in the transfer of customer accounts, which should prevent fraudulent and manipulative acts and practices, promote just and equitable principals of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, protect investors and the public interest.

The MSRB also believes that the proposed rule change is consistent with

[67] *See* proposed Rule G–26(i)(ii)–(iii).

[68] *See* Rule G–26(h).

[69] FINRA also defines a ''participant in a registered clearing agency'' as ''a member of a registered clearing agency that is eligible to make use of the agency's automated customer securities account transfer capabilities,'' and ''registered clearing agency'' as ''a clearing agency as defined in, and registered in accordance with, the Exchange Act.'' The proposed rule change would include these same definitions. *See* proposed Rule G–26(a)(iv)–(v).

[70] *See* proposed Rule G–26(k).

[71] *See* proposed Rule G–26(g).

[72] *See* Supplementary Material .02 to proposed Rule G–26.

[73] *See* Supplementary Material .03 to proposed Rule G–26.

[74] 15 U.S.C. 78*o*–4(b)(2).

[75] 15 U.S.C. 78*o*–4(b)(2)(C).

[76] 15 U.S.C. 78*o*–4(b)(2).

[77] 15 U.S.C. 78*o*–4(b)(2)(C).

Section 15B(b)(2)(G) of the Act,[78] which provides that the MSRB's rules shall:

> prescribe records to be made and kept by municipal securities brokers, municipal securities dealers, and municipal advisors and the periods for which such records shall be preserved.

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(G) of the Act[79] because it would require dealers to document the procedures they follow to effect customer account transfers and to require explicitly written procedures for supervision of the same.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act[80] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In determining whether these standards have been met, the MSRB was guided by the Board's Policy on the Use of Economic Analysis in MSRB Rulemaking. In accordance with this policy, the Board has evaluated the potential impacts on competition of the proposed rule change, including in comparison to reasonable alternative regulatory approaches, relative to the baseline. The MSRB does not believe the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The MSRB does not believe the proposed rule change will create a burden on competition, as all municipal securities brokers and municipal securities dealers would be subject to the same modified requirements for customer account transfers. The MSRB believes that the proposed rule change may reduce inefficiencies that stem from uncertainty and confusion associated with existing Rule G–26. The MSRB also believes that dealers may benefit from clarifications and revisions that more closely reflect the securities industry standard, which may, in turn, reduce operational risk to dealers and investors. Finally, the MSRB believes that the proposed rule change will make the transfer of customer municipal securities account assets more flexible, less burdensome, and more efficient, while reducing confusion and risk to investors and allowing them to more conveniently move their municipal securities to their dealer of choice.

[78] 15 U.S.C. 78*o*–4(b)(2)(G).

[79] *Id.*

[80] 15 U.S.C. 78*o*–4(b)(2)(C).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The MSRB received three comment letters in response to the Request for Comment.[81] The comment letters are summarized below by topic, and the MSRB's responses are provided.

The Need for Rule G–26

SIFMA supported the stated purpose of the draft amendments to modernize Rule G–26 and promote a uniform customer account transfer standard, but it suggests some alternative approaches to achieve that end. Specifically, SIFMA recognized that Rule G–26 is only applicable to municipal securities brokers and municipal securities dealers, particularly those with municipal security-only accounts and bank dealers, but believes the rule is unnecessary. Further, SIFMA noted that the firms subject to Rule G–26 are a small fraction of the total number of firms and, for the most part, are not direct clearing participants of the NSCC and, therefore, not eligible to participate in the ACATS process.[82] SIFMA stated that, because these firms are not members of the NYSE or FINRA and, therefore, not subject to NYSE Rule 412 and FINRA Rule 11870, they are exempt from participating in ACATS under Rule G–26. Finally, SIFMA believes that there are few customer account transfers that occur ex-clearing (*i.e.,* a manual process outside of ACATS), making Rule G–26 redundant, and suggests that the MSRB eliminate it.

Although SIFMA is correct that most of the firms subject to Rule G–26 do not participate in ACATS, SIFMA did not recognize that, from the rule's inception, it has been intended to cover these firms, which are not subject to NSCC, FINRA or NYSE rules, regardless of how few of them there may be and regardless of how few customer account transfers they may perform.[83] As such, the MSRB believes that there remains a need for Rule G–26 to address the manual processes used by these firms in transferring customer accounts.

SIFMA alternatively suggested that, if the MSRB does not eliminate Rule G–26, it should amend the rule to incorporate FINRA Rule 11870 by reference, similar to what the NYSE has done in its Rule 412 and what the Board has done in MSRB Rule G–41, on anti-money laundering compliance programs.[84] SIFMA specifically proposed that the rule state that dealers ''shall comply with FINRA Rule 11870, concerning the transfer of customer accounts between members, and any amendments thereto, as if such Rule is part of MSRB's Rules.'' SIFMA believed this ''methodology is the most efficient way to reduce confusion and risk to investors, and reduce regulatory risk to dealers,'' which SIFMA stated have largely not been complying with the rule. SIFMA further believes this would ensure that all dealers are covered by a rule and that there is harmonization between the various SROs' rules.

Although amending Rule G–26 to incorporate FINRA Rule 11870 by reference could be a simple and efficient solution to provide a uniform industry standard, the MSRB does not typically incorporate other regulators' rules by reference. The MSRB believes that, while the incorporation by reference approach suggested by SIFMA may enhance harmonization with FINRA's rules, that approach would raise significant concerns for the MSRB, given its statutory mandate and mission. For example, if FINRA or its staff were to provide an interpretation of FINRA Rule 11870, the MSRB automatically would be adopting that interpretation without deliberately considering the issues that may be unique to, or the interpretation's ramifications for, the municipal securities market. Further, there are municipal securities dealers that are not members of FINRA. Those dealers may not have notice of FINRA's rule interpretations unless the MSRB were to monitor FINRA's rulemaking and independently notify dealers. Therefore, if the MSRB were to regulate customer account transfers over which it has jurisdiction by simply incorporating a FINRA rule by reference, the MSRB potentially could be seen as delegating its core mission to protect investors, issuers, and the public interest and to promote a fair and efficient municipal market.

[81] *See* Letters from: Mike Nicholas, Chief Executive Officer, Bond Dealers of America (''BDA''), dated February 17, 2017; Michael Paganini (''Paganini''), dated January 6, 2017; and Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, dated February 17, 2017.

[82] As of May 16, 2017, there were 27 bank dealers registered with the MSRB.

[83] *See* Exchange Act Release No. 22810 (Jan. 17, 1986), 51 FR 3287 (Jan. 24, 1986) (SR–MSRB–86–2).

[84] Rule G–41 provides that dealers will be deemed to be in compliance with anti-money laundering program requirements if they establish and implement a program that is in compliance with the rules, regulations or requirements governing the establishment and maintenance of anti-money laundering programs of the registered securities association of which the dealer is a member or the appropriate regulatory agency as defined in the Exchange Act.

Consistency With FINRA Rule 11870 and the Definition of ''Nontransferable Asset''

As discussed in the Request for Comment, FINRA Rule 11870(f)(1) requires that any fail contracts resulting from an account transfer, which includes municipal securities, be included in a dealer's fail file and that, not later than 30 business days following the date delivery was due, the dealer shall take steps to obtain physical possession or control of the municipal securities so failed to receive by initiating a buy-in procedure or otherwise.[85] This 30-day time frame, however, is inconsistent with Rule G–26, which, through reference to MSRB Rule G–12(h), provides 10 calendar days with the option for a one-time extension of 10 calendar days, totaling up to 20 calendar days, for dealers to close out failed inter-dealer municipal securities transactions.[86] The Request for Comment also noted that an additional layer of inconsistency and complexity arises due to the system used to process most failed securities resulting from customer account transfers and inter-dealer transactions. Specifically, an inter-dealer transaction of municipal securities is processed in the NSCC's Continuous Net Settlement (''CNS'') system to be paired up with potentially another counterparty and settled.[87] Any CNS-eligible municipal security in a customer account transfer that fails to be delivered also enters CNS. Once in CNS, it is difficult to determine which fails resulted from inter-dealer transactions or customer account transfers, and the counterparties that are paired up may not be the same counterparties to the original transaction/transfer. As a result, it may be unclear with which rule and corresponding time frame firms should comply—Rule G–12(h) or FINRA Rule 11870.

To avoid these inconsistencies and uncertainties, the draft amendments in the Request for Comment proposed to amend the definition of ''nontransferable asset'' to include any customer long position in a municipal security that allocates to a short position, which resulted from either the carrying party's trading activity or failure to receive the securities it purchased to fill a customer's municipal securities order (*i.e.,* an inter-dealer transaction fail). In the Request for Comment, the MSRB noted that, if FINRA were to similarly amend Rule 11870 to make these short positions nontransferable, then customer account transfers of municipal securities would be significantly less likely to fail and there might no longer be a need to establish fail contracts and provide a process by which those fails could be closed out, eliminating the timing inconsistencies and ambiguity. The MSRB further noted that dealers may not be subject to the costs associated with these transfer fails, as well as the complication and confusion that may arise on coupon payment dates from the need to provide substitute interest for tax-exempt municipal securities. The MSRB stated its belief that this draft amendment would have the additional benefits of reducing counterparty risk and increasing investor confidence.

SIFMA recognized the inconsistency between Rule G–26 and FINRA Rule 11870, as well as the complexity in CNS created by the inconsistency; however, it disagreed with the MSRB's analysis that the draft amendment to the definition of ''nontransferable asset'' would reduce counterparty risk and increase customer confidence, and it believed that it would be disruptive to industry practice and outside of standard ACATS procedures. SIFMA stated that ''[a]utomated systems fail to be efficient if they require manual processes, such as validating if a long municipal security position is allocated to a short firm position.'' BDA also had concerns and believes that the proposed amendment to the definition is unworkable. BDA stated that significant operational changes would have to occur in order to make the change feasible because current dealer systems are not designed to code or segregate inter-dealer transaction fails and account transfer fails, and because most firms track fails at the firm level, not at the account level for compliance with regulatory issues, such as properly tracking substitute interest. BDA urged the MSRB to engage in dealer outreach to find a different solution that better aligns with existing dealer systems and processes.

As an alternative to amending the definition of ''nontransferable asset,'' SIFMA believed that FINRA Rule 11870 must be amended as soon as practicable to reflect the recent amendments to Rule G–12 relating to close-outs to eliminate the inconsistency in the time frames. Accordingly, SIFMA suggested that FINRA simply cross-reference Rule G–12(h), and any amendments thereto, for any fail contracts in municipal securities resulting from customer account transfers.[88] BDA commented that it did not see a policy reason to amend Rule G–26, but BDA's letter did not confront the inconsistency between Rule G–26 and FINRA Rule 11870, and the related complexity created in CNS. BDA further questioned the need for any changes by FINRA to FINRA Rule 11870, and believed FINRA Rule 11870(f) is an adequate standard with which Rule G–26 should harmonize instead.

Given both SIFMA's and BDA's concerns about the operational changes needed and the corresponding costs that would result from such a change, the MSRB, at this time, does not believe amending the definition of ''nontransferable asset'' to include any customer long position in a municipal security that allocates to a short position is appropriate, particularly without certainty that FINRA would similarly amend FINRA Rule 11870 to ensure that all short municipal securities positions in customer account transfers receive identical treatment.

Miscellaneous Comments

As discussed above, in response to comments from SIFMA, the proposed rule change would amend the definition of ''nontransferable asset'' to include proprietary products of the carrying party and would allow for either the carrying party or the receiving party (or both) to provide the list of nontransferable assets to a customer and request their disposition.[89] Additionally, Paganini believed that firms are ''very inefficient when it comes to account transfers of specific types of assets *i.e.,* some municipal bonds,'' and that ''it is exasperating, frustrating, and time consuming for the private investor'' when there is a problem with an account transfer. He recommended that there be some type of enforcement mechanism or financial penalty for transfers that cannot be

[85] A buy-in occurs when the seller in a transaction, who failed to deliver the securities sold to the buyer, purchases all or any part of the securities necessary to complete the transaction at the current market, with the seller bearing any burden from any change in the market price, and any benefit from any change in the market price remaining with the buyer.

[86] The MSRB notes that market participants were very supportive of, and, in fact, suggested the time frames recently adopted in Rule G–12(h) for closing out failed inter-dealer transactions. The MSRB further notes that the inconsistency between the timing of FINRA's buy-in procedures under FINRA Rule 11870(f)(1) (30 business days) and the timing of the MSRB's previous close-out procedures for inter-dealer transactions (up to 90 business days) existed prior to the amendments to Rule G–12(h).

[87] As a key part of the CNS system, NSCC acts as the central counterparty for clearance and settlement for virtually all broker-to-broker equity, corporate and municipal bond and unit investment trust trading in the United States. CNS processes include an automated book-entry accounting system that centralizes settlement and maintains an orderly flow of security and money balances.

[88] SIFMA also suggested that FINRA consolidate its rules relating to customer account transfers, including related fees, into FINRA Rule 11870.

[89] *See Definition of* ''*Nontransferable Asset*'' and *Transfer Instructions supra.*

accomplished within a reasonable time period. The MSRB notes that dealers are expected to comply with the appropriate customer account transfer rule, including Rule G–26 (and the time frames included therein) where applicable, and that, if they do not, they could be subject to an enforcement action for violating the rule.

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 of 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 such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2017–03 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–MSRB–2017–03. 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 Web site (*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 Web site 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 MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2017–03 and should be submitted on or before July 5, 2017.

For the Commission, pursuant to delegated authority.[90]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2017–12266 Filed 6–13–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80888; File No. SR–NASDAQ–2017–053]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 5110(c) To Permit a Reverse Merger Company To Qualify for Initial Listing Under Any Applicable Listing Standard After Satisfying the Required Seasoning Period

June 8, 2017.

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 May 25, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to allow a former reverse merger company to qualify for initial listing under any applicable listing standard after satisfying the required seasoning period.

The text of the proposed rule change is set forth below. Proposed new language is italicized; deleted text is in brackets.

* * * * *

5110. Change of Control, Bankruptcy and Liquidation, and Reverse Mergers

(a)–(b) No change.

(c) Reverse Mergers

(1) A Company that is formed by a Reverse Merger (a ''Reverse Merger Company'') shall be eligible to submit an application for initial listing only if the combined entity has, immediately preceding the filing of the initial listing application:

(A) No change.

(B) maintained a closing price [of $4 per share or higher]*equal to the share price requirement applicable to the initial listing standard under which the Reverse Merger Company is qualifying to list* for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days.

(2) In addition to satisfying all of Nasdaq's other initial listing requirements, a Reverse Merger Company will only be approved for listing if, at the time of approval, it has:

(A) No change.

(B) maintained a closing price [of $4 per share or higher]*equal to the share price requirement applicable to the initial listing standard under which the Reverse Merger Company is qualifying to list* for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days prior to approval.

(3) No change.

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.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 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.

[90] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2011, Nasdaq adopted additional requirements (the ''Reverse Merger Rules'') for companies applying to list after consummating a reverse merger with a shell company (a ''Reverse Merger Company'').[3] These additional requirements were proposed in response to regulatory concerns, including accounting fraud allegations, which had arisen with respect to Reverse Merger Companies, and were designed to improve the reliability of the reported financial results of Reverse Merger Companies by requiring a pre-listing ''seasoning period'' during which the post-merger public company would have produced financial and other information in connection with its required Commission filings. A Reverse Merger Company was also required to meet the minimum share price requirement for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days, before filing its application and before being approved for listing.[4] Of course, a Reverse Merger Company is also required to meet all other requirements for initial listing before it could be approved.

At the time Nasdaq adopted the Reverse Merger Rules, all companies were required to achieve a minimum $4 bid price for listing. Subsequently, in 2012, Nasdaq modified its listing requirements to add an alternative to the $4 minimum bid price per share requirement (the ''Alternative Price Requirement'').[5] Under the Alternative Price Requirement, a security could qualify for listing on the Nasdaq Capital Market if, for at least five consecutive business days prior to approval, the security has a minimum closing price of at least $3 per share, if the issuer meets the Equity or Net Income standards, or at least $2 per share, if the issuer meets the Market Value of Listed Securities standard, in addition to other criteria designed to ensure that the listed security would not be considered a penny stock.[6]

At the time, because Nasdaq did not yet have sufficient experience with the Reverse Merger Rules or any experience with the new alternative price criteria, Nasdaq did not allow Reverse Merger Companies to list under the Alternative Price Requirement.

Nasdaq now believes it is appropriate to allow a former Reverse Merger Company to qualify for initial listing under any applicable listing standard, including the Alternative Price Requirement, after satisfying the seasoning period required by the Reverse Merger Rules. In making this change, Nasdaq notes that the Reverse Merger Rules' seasoning period requires that a company must wait at least one year after it files with the Commission or other Regulatory Authority all required information about the transaction, including audited financial statements for the combined entity and that the Reverse Merger Company must have timely filed all required periodic financial reports with the Commission or other Regulatory Authority for the prior year, including at least one annual report with financial statements for a full fiscal year commencing after it filed the necessary information about the transaction. Nasdaq believes that, upon completion of this period, it is appropriate to treat a Reverse Merger Company in the same manner as any other company and to permit listing under any of Nasdaq's applicable listing requirements, including the Alternative Price Requirement.

Rule 3a51–1 under the Act[7] defines ''penny stock'' as any equity security that does not satisfy one of the exceptions enumerated in subparagraphs (a) through (g) under the Rule. If a security is a penny stock, Rules 15g–1 through 15g–9 under the Act[8] impose certain additional disclosure and other requirements on brokers and dealers when effecting transactions in such securities. Rule 3a51–1(a)(2) under the Act[9] excepts from the definition of penny stock securities registered on a national securities exchanges that have initial listing standards that meet certain requirements, including a $4 bid price at the time of listing. If a security listed under the Alternative Price Requirement no longer meets the applicable net tangible assets or average revenue tests following initial listing, and does not qualify for another exclusion under the penny stock rules, the security could become subject to the penny stock rules.[10] Further, broker-dealers that effect recommended transactions in securities that originally qualified for listing under the Alternative Price Requirement, among other things, under Commission Rule 3a51–1(g), need to review current financial statements of the issuer to verify that the security meets the applicable net tangible assets or average revenue test, have a reasonable basis for believing they remain accurate, and preserve copies of those financial statements as part of its records. To facilitate compliance by broker-dealers, Nasdaq monitors the companies listed under the Alternative Price Requirement and publishes on the Nasdaq Listing Center Web site a daily list of any such company that no longer meets the net tangible assets or average revenue tests of the penny stock exclusion, and which does not satisfy any other penny stock exclusion.[11] Nasdaq also specifically reminds broker-dealers of their obligations under the penny stock rules.[12]

To address concerns about the potential manipulation of lower priced stocks to meet the initial listing requirements, securities listing under the Alternative Price Requirement are

[3] *See* Exchange Act Release No. 65708 (November 8, 2011), 76 FR 70799 (November 15, 2011) (SR–NASDAQ–2011–073). Rule 5005(a)(35) defines a ''Reverse Merger'' as any transaction whereby an operating company becomes an Exchange Act reporting company by combining, either directly or indirectly, with a shell company which is an Exchange Act reporting company, whether through a reverse merger, exchange offer, or otherwise. The rule also provides certain exceptions to this general definition and provides guidance on the factors Nasdaq will consider in determining whether a company is a shell company.

[4] Rule 5110(c). A publicly traded company that applies for listing under the Market Value of Listed Securities standard in Rule 5505(b)(2) would also need to meet the applicable price requirement for 90 consecutive trading days prior to applying, although these periods can run concurrently.

[5] *See* Exchange Act Release No. 66830 (April 18, 2012), 77 FR 24549 (April 24, 2012) (approving SR–NASDAQ–2012–002) (the ''Alternative Price Filing'').

[6] Specifically, the company must have net tangible assets in excess of $2 million, if the issuer has been in continuous operation for at least three years; or net tangible assets in excess of $5 million, if the issuer has been in continuous operation for less than three years; or average revenue of at least $6 million for the last three years. *See* Nasdaq Rule 5505(a)(1)(B) and IM–5505.

[7] 17 CFR 240.3a51–1.

[8] 17 CFR 240.15g–1 *et seq.*

[9] 17 CFR 240.3a51–1(a)(2).

[10] The Commission has previously noted the potential for abuse with respect to penny stocks. See, *e.g.,* Securities Exchange Act Release No. 49037 (January 16, 2004), 69 FR 2531 (January 8, 2004) (''Our original penny stock rules reflected Congress' view that many of the abuses occurring in the penny stock market were caused by the lack of publicly available information about the market in general and about the price and trading volume of particular penny stocks'').

[11] *https://listingcenter.nasdaq.com/PennyStockList.aspx.*

[12] In approving the Alternative Price Filing, the Commission stated that it believed that although the listing of securities that do not have a blanket exclusion from the penny stock rules and require ongoing monitoring may increase compliance burdens on broker-dealers, the additional steps taken by Nasdaq to facilitate compliance should reduce those burdens and that, on balance, Nasdaq's proposal is consistent with the requirement of Section 6(b)(5) of the Act that the rules of an exchange, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. 77 FR at 24552.

generally required to maintain a $2 or $3 closing price for five consecutive business days prior to approval for listing, rather than on a single day as under the $4 price test, to reduce the risk that someone might attempt to manipulate or otherwise artificially inflate the closing price in order to allow a security to qualify for listing.[13] Under the proposed rule change, this requirement would be further heightened in the case of a Reverse Merger Company, and the security would have to maintain the applicable $2 or $3 closing price for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days prior to its application and approval for listing.

In addition, if a security listed under the Alternative Price Requirement subsequently achieves a $4 closing price over at least five consecutive business days, and the issuer and the security satisfy all other relevant initial listing criteria, then such security would no longer be considered as having listed under the Alternative Price Requirement. While this potentially could provide an incentive for market participants to manipulate the price of the security in order to achieve the $4 closing price and no longer be considered as having listed under the Alternative Price Requirement, Nasdaq adopted measures designed to address those concerns for any company listed under the Alternative Price Requirement, which the Commission concluded should help reduce the potential for price manipulation to achieve the $4 closing price, and in this respect are designed to prevent fraudulent and manipulative acts and practices consistent with Section 6(b)(5) of the Act. Specifically, Nasdaq will conduct a robust, wholesale review of the issuer's compliance with all applicable initial listing criteria, including qualitative and quantitative standards, at the time the $4 closing price is achieved, and will have a reasonable basis to believe that that price was legitimately, and not manipulatively, achieved. Nasdaq also applies enhanced surveillance procedures to monitor securities listed under the Alternative Price Requirement in the period around when they achieve $4, and would no longer be considered as having listed under the Alternative Price Requirement, to identify anomalous trading that would be indicative of potential price manipulation. These measures would also apply to a Reverse Merger Company listed under the proposed rule change.

Accordingly, Nasdaq proposes to remove references within the Reverse Merger Rule requiring the security of a Reverse Merger company to achieve a $4 minimum bid price and replace those references with a requirement that the security satisfy the share price requirement applicable to the initial listing standard under which the Reverse Merger company is qualifying to list.[14]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed rule change will allow a Reverse Merger Company to satisfy any of the already approved listing requirements for listing on Nasdaq and, thereby, eliminate an unnecessary impediment to a free and open market and a national market system. A company listing under the alternative price requirements of Rule 5505(a)(1)(B), including a Reverse Merger Company listing under this proposed rule change, must also satisfy additional requirements designed to ensure that the listed security would not be considered a penny stock and, following listing Nasdaq will monitor the company and publish on its Web site if the company no longer satisfies those additional requirements or any of the other exclusions from being a penny stock contained in Rule 3a51–1 under the Securities Act of 1933. In addition, whereas other companies listing under the Alternative Price Requirement must satisfy the applicable closing price for five consecutive business days, a Reverse Merger Company listing under the proposed rule change will be required to meet the heightened requirement in the Reverse Merger Rules and must satisfy that price for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days before it can apply and be approved. Further, given that a Reverse Merger Company must satisfy a seasoning period, and timely file financial information during that period, Nasdaq believes that the proposed change to allow a Reverse Merger Company to list under any of the approved listing requirements protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, by eliminating a disparity between Nasdaq's rules and those of NYSE MKT, the proposed rule change will enhance competition.[17]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.

[13] A publicly traded company that applies for listing under the Market Value of Listed Securities standard in Rule 5505(b)(2) would also need to meet the applicable price requirement for 90 consecutive trading days prior to applying.

[14] Nasdaq rules permit Nasdaq to apply additional or more stringent criteria for the initial listing of securities in situations where it would be inappropriate to list a Reverse Merger company at a reduced price, such as where the company has not demonstrated the ability to maintain compliance with the continued listing requirements. *See* Nasdaq Rule 5101.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] Section 101(e) of the NYSE MKT Company Guide permits a Reverse Merger Company to list on NYSE MKT upon satisfaction of any applicable listing requirement, including those with a $2 or $3 minimum price.

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2017–053 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2017–053. 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 Web site (*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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–053, and should be submitted on or before July 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2017–12265 Filed 6–13–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80891; File No. SR–NASDAQ–2017–054]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Merge the OpenView Depth-of-Book Product Into TotalView

June 8, 2017.

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 May 26, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to merge the OpenView depth-of-book product into TotalView, and to amend the Exchange's fees at Rules 7023 and 7026 to reflect the merger of these two products, as described further below. The Exchange has designated the proposed amendments to be operative on August 1, 2017.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fees at Rules 7023 and 7026 to merge the OpenView depth-of-book product into TotalView.

TotalView and OpenView

TotalView, the Exchange's complete depth data feed product for Nasdaq-listed securities, provides every eligible order at every price level for all Nasdaq members, as well as Net Order Imbalance information.[3] OpenView—almost universally purchased in conjunction with Nasdaq's other depth-of-book products, TotalView and Level 2 [4]—provides the same information as TotalView for stocks listed on other exchanges.

TotalView and OpenView may be purchased through monthly subscription fees or enterprise license fees. Different fee structures apply if purchasers opt to view TotalView or OpenView using an Enhanced Display Solution (''EDS'') or utilize the data in a non-display fashion using a Managed Data Solution (''MDS''). The current fees associated with TotalView and OpenView that will be affected by the proposed changes, set forth in Rules 7023 and 7026, are as follows:

1. *Per Subscriber Fees.* Monthly Non-Professional per Subscriber fees are $14 for TotalView,[5] and $1 for OpenView.[6] Monthly Professional Subscriber fees are $70 for TotalView,[7] and $6 for OpenView.[8]

2. *Professional Subscriber Fees for Non-Display Usage.* The professional Subscriber fees for Non-Display Usage

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Net Order Imbalance information provides data relating to buy and sell interest at the open and close of the trading day, in the context of an Initial Public Offering, and after a trading halt.

[4] *See* Securities Exchange Act Release No. 79863 (January 23, 2017) 82 FR 8632 (January 27, 2017) (SR–NASDAQ–2017–004) (explaining that Level 2 will be retired as a separate product).

[5] Nasdaq Rule 7023(b)(2)(A).

[6] Nasdaq Rule 7023(b)(3)(A).

[7] Nasdaq Rule 7023(b)(2)(B). Fees are for Display Usage, or for Non-Display Usage based upon indirect access.

[8] Nasdaq Rule 7023(b)(3)(B). Fees are for Display Usage, or for Non-Display Usage based upon indirect access.

based upon direct access set forth in Rule 7023(b)(4) allow for the purchase of all depth-of-book products, including TotalView, Level 2 and OpenView, for one fee.[9]

3. *Enterprise License Fees.* The enterprises [sic] license fees set forth in Nasdaq Rules 7023(c)(1) and (c)(2) allow for the purchase of TotalView and OpenView, and the enterprise license fees at 7023(c)(3) allow for the purchase of all three depth-of-book products, including TotalView, Level 2 and OpenView, under the same fee structure.[10]

4. *Per Subscriber Fees for Enhanced Display Solutions.* The monthly fee for Professional Subscribers using EDS under Rule 7026(a)(1)(B) is $74 for TotalView and Level 2 and $6 for OpenView. Non-Professional Subscribers of EDS pay the applicable TotalView, Level 2 or OpenView rates.[11]

5. *Enhanced Display Solution Enterprise License.* The EDS enterprise license set forth in Rule 7026(a)(1)(C) allows TotalView and Level 2 to be distributed to an unlimited number of Professional Subscribers for $70, and OpenView for $6.

6. *Managed Data Solutions.* Rule 7026(b) sets forth a fee structure for MDS that applies the same fees for the distribution of TotalView, Level 2 and OpenView.

Proposed Changes

The Exchange proposes to amend the fees at Rules 7023 and 7026 to merge OpenView into TotalView. In substance, the Exchange will combine all fees for TotalView and OpenView into a single sum, without increasing the total price of the two products, and make a number of conforming changes to delete specific references to OpenView. The specific fee changes to Rules 7023 and 7026 are as follows:

1. *Per Subscriber Fees.* Monthly Non-Professional per Subscriber fees will be changed from $14 for TotalView[12] and $1 for OpenView[13] to $15 for TotalView, which will be redefined in current Rule 7023(a)(1)(C) to include OpenView data. Monthly Professional Subscriber fees will be changed from $70 for TotalView[14] and $6 for OpenView[15] to $76 for TotalView, which will include OpenView data.

2. *Professional Subscriber Fees for Non-Display Usage.* There will be no substantive change to the Professional Subscriber fees for Non-Display Usage set forth in Nasdaq Rule 7023(b)(4), which already allows for the purchase of all three depth-of-book products, including OpenView, TotalView and Level 2, under the same fee structure. Explicit references to OpenView will be deleted as a technical, conforming change.

3. *Enterprise License Fees.* There will be no substantive change to the enterprises [sic] license fees set forth in Nasdaq Rules 7023(c)(1), (c)(2) and (c)(3), which already allow for the purchase of depth-of-book products, including OpenView and TotalView,[16] for the same fee. Explicit references to OpenView will be deleted as a technical, conforming change.

4. *Per Subscriber Fees for Enhanced Display Solutions.* The monthly fee for Professional Subscribers using EDS will be changed from $74 for TotalView and Level 2 and $6 for OpenView[17] to $80 for TotalView, which will include all OpenView data, and Level 2. Non-Professional Subscribers of EDS will continue to pay at the applicable TotalView or Level 2 rates.[18] Explicit references to OpenView will be deleted as a technical, conforming change.

5. *Enhanced Display Solution Enterprise License.* The monthly professional subscriber fee for purchasers of an enterprise license with EDS will be changed from $70 for TotalView and Level 2 and $6 for OpenView[19] to $76 for TotalView, which will include all OpenView data, and Level 2.

6. *Managed Data Solutions.* There will be no substantive change to the fee structure for MDS set forth in Rule 7026(b), which already allows for the distribution of all three depth-of-book products, including OpenView, TotalView and Level 2, under the same fee structure. Explicit references to OpenView will be deleted as a technical, conforming change.

In addition to all of these changes, the definition of OpenView will be removed from the current Rule book at Rule 7023(a)(1)(B), and the data provided in OpenView will be added to the definition of TotalView currently in Rule 7023(a)(1)(C), which will be re-designated as Rule 7023(a)(1)(B).

The proposed rule change will lower administrative costs and simplify the purchase of depth-of-book products, with no impact on fees for most customers. Almost all purchasers of depth products already purchase OpenView in conjunction with TotalView or Level 2, and prices will not change for these customers. Most of the limited number of customers purchasing TotalView or OpenView alone are in the process of phasing out the practice, and will not be materially affected by the proposed change.

Depth-of-book customers that purchase TotalView and OpenView together have to manage separate reporting, billing and approvals for two products that they utilize as a single product. The resulting administrative burden applies to four separate categories of fees: (i) Non-Professional per Subscriber fees for TotalView[20] and OpenView;[21] (ii) Professional Subscriber fees for TotalView[22] and OpenView;[23] (iii) monthly fees for Professional and Non-Professional Subscribers using EDS;[24] and (iv) monthly subscriber fees for purchasers of an EDS enterprise license.[25] The proposed change will lessen the administrative burden on these customers—representing the bulk of depth-of-book purchasers—while leaving fees and product quality unaffected.

Nasdaq has engaged in discussions with Distributors that purchase OpenView without TotalView or Level 2—or TotalView or Level 2 without OpenView—and determined that this practice is being phased out. This practice had its origins before Nasdaq became an Exchange, when Nasdaq did not trade a significant number of securities listed on other exchanges. Now, Nasdaq routinely trades the securities of other exchanges, and the rationale for this practice is obsolete. As such, Nasdaq does not expect merging OpenView into TotalView to have a long-term impact on customers that are

[9] The Rule 7023(b)(4) fees are based on the number of Subscribers; the fee structure allows a Subscriber to obtain any combination of TotalView, Level 2 and OpenView, or all three products, for the same per Subscriber fee.

[10] The enterprise license fees set forth in Rules 7023(c)(1) and 7023(c)(2) are comprised of two components: An enterprise license fee and per-Subscriber monthly fees. A Distributor may obtain any combination of TotalView, Level 2 and OpenView, or all three products, for the same enterprise license and per-Subscriber monthly fees under Rules 7023(c)(1) and (c)(2). The fee structure set forth in Rule 7023(c)(3) is an enterprise license fee without per-Subscriber monthly fees. A Distributor may obtain any combination of TotalView, Level 2 and OpenView, or all three products, for the enterprise license fee set forth in Rule 7023(c)(3).

[11] Nasdaq Rule 7026(a)(1)(B).

[12] Nasdaq Rule 7023(b)(2)(A).

[13] Nasdaq Rule 7023(b)(3)(A).

[14] Nasdaq Rule 7023(b)(2)(B). Fees are for Display Usage, or for Non-Display Usage based upon indirect access.

[15] Nasdaq Rule 7023(b)(3)(B).

[16] Level 2 data is included under Nasdaq Rule 7023(c)(3).

[17] Nasdaq Rule 7026(a)(1)(B).

[18] *Id.*

[19] Nasdaq Rule 7026(a)(1)(C).

[20] Nasdaq Rule 7023(b)(2)(A).

[21] Nasdaq Rule 7023(b)(3)(A).

[22] Nasdaq Rule 7023(b)(2)(B).

[23] Nasdaq Rule 7023(b)(3)(B).

[24] Nasdaq Rule 7026(a)(1)(B).

[25] Nasdaq Rule 7026(a)(1)(C).

already in the process of deciding whether to purchase either both products, or neither, because of fundamental changes in the economic environment. The proposed fee change—which leaves the total cost of OpenView and TotalView unchanged—is unlikely to alter that decision.

No transition time is needed to merge OpenView into TotalView—they are already offered in a compatible formats [sic] and Distributors require no time to modify their systems to accommodate the change.

The proposed fees are optional in that they apply only to firms that elect to purchase these products. The proposed changes do not impact the cost of any other Nasdaq product.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[26] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[27] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [28]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [29] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[30] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [31]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .'' [32]

The Exchange believes that the proposal to integrate Nasdaq TotalView and OpenView into a single depth-of-book product is an equitable allocation of reasonable dues, fees or other charges. Almost all purchasers of Nasdaq depth-of-book products already treat TotalView and OpenView as a single, combined product, and the proposed changes will reduce administrative burden. Customers that do not currently purchase both products are already in the process of deciding whether to purchase either both products, or neither, and the proposed fee change—which leaves the total cost of OpenView and TotalView unchanged—is unlikely to alter that decision. The fees for TotalView and OpenView, like all proprietary data fees, are constrained by the Exchange's need to compete for order flow, and are subject to competition from other products and among broker-dealers for customers. If Nasdaq is incorrect in its assessment of these markets, there are no barriers to entry for competitors with substantially similar products.

The Exchange believes that the proposed fee changes are an equitable allocation because the fees appropriately reflect the value of depth-of-market data to customers as well as industry practice in which most customers purchase the current versions of TotalView and OpenView concurrently. The proposed fee changes are not unfairly discriminatory because the Exchange will apply the same fee to all similarly-situated subscribers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The question of whether the prices of depth-of-view products are constrained by competitive forces was examined in 2016 by an Administrative Law Judge in an application for review by the Securities Industry and Financial Markets Association of actions taken by Self-Regulatory Organizations.[33] After a four-day hearing and presentation of substantial evidence, the administrative law judge stated that ''competition plays a significant role in restraining exchange pricing of depth-of-book products'' [34] because ''depth-of-book products from different exchanges function as substitutes for each other,'' [35] and, as such, ''the threat of substitution from depth-of-book customers constrains their depth-of-book prices.'' [36] In addition, the administrative law judge stated that ''[s]hifts in order flow and threats of shifting order flow provide a significant competitive force in the pricing of . . . depth-of-book data.'' [37] As such, Nasdaq's depth-of-book fees are ''constrained by significant competitive forces.'' [38] As an example of the impact of market forces on the price of proprietary data, the Exchange recently lowered the Nasdaq Basic enterprise license fee for the distribution of certain information by broker-dealers from $350,000 to $100,000.[39]

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(4) and (5).

[28] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[29] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[30] *See NetCoalition,* at 534–535.

[31] *Id.* at 537.

[32] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[33] *Securities Industry and Financial Markets Association,* Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (A.L.J. June 1, 2016).

[34] *Id.* at 33.

[35] *Id.*

[36] *Id.*

[37] *Id.* at 37.

[38] *Id.* at 43.

[39] *See* Securities Exchange Act Release No. 79456 (December 2, 2016) 81 FR 88716 (December 8, 2016) (SR–NASDAQ–2016–162) (fee decrease for an enterprise license for the distribution of Nasdaq Basic to Non-Professional and Professional Subscribers with whom the broker-dealer has a brokerage relationship).

The proposed changes will integrate Nasdaq TotalView and OpenView into a single depth-of-book product. If the proposed product revisions are unattractive to market participants, it is likely that the Exchange will lose market share.

Market forces constrain fees for TotalView, like all depth-of-book products, in three respects. First, all fees related to TotalView are constrained by competition among exchanges and other entities attracting order flow. Firms make decisions regarding depth-of-book products and other proprietary data based on the total cost of interacting with the Exchange, and order flow would be harmed by the supracompetitive pricing of any proprietary data product. Second, the prices of TotalView are constrained by the existence of substitutes that are offered, or may be offered, by entities that offer proprietary data. Third, competition among Distributors for customers will further constrain the cost of TotalView.

Competition for Order Flow

Fees related to TotalView are constrained by competition among exchanges and other entities seeking to attract order flow. Order flow is the ''life blood'' of the exchanges. Broker-dealers currently have numerous alternative venues for their order flow, including self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs, which may readily reduce costs by directing orders toward the lowest-cost trading venues.

The level of competition and contestability in the market for order flow is demonstrated by the numerous examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, and the BATS exchanges. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume. For a variety of reasons, competition from new entrants, especially for order execution, has increased dramatically over the last decade.

Each SRO, TRF, ATS, and BD that competes for order flow is permitted to produce proprietary data products. Many currently do or have announced plans to do so, including NYSE, NYSE Amex, NYSE Arca, the BATS exchanges, and IEX. This is because Regulation NMS deregulated the market for proprietary data. While BDs had previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Order routers and market data vendors can facilitate production of proprietary data products for single or multiple BDs. The potential sources of proprietary products are virtually limitless.

The markets for order flow and proprietary data are inextricably linked: A trading platform cannot generate market information unless it receives trade orders. As a result, the competition for order flow constrains the prices that platforms can charge for proprietary data products. Firms make decisions on how much and what types of data to consume based on the total cost of interacting with Nasdaq and other exchanges. Data fees are but one factor in a total platform analysis. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. A supracompetitive increase in the fees charged for either transactions or proprietary data has the potential to impair revenues from both products. In this manner, the competition for order flow will constrain prices for proprietary data products.

Substitute Products

The price of depth-of-book data is constrained by the existence of competition from other exchanges, such as NYSE and the BATS exchanges, which sell proprietary depth-of-book data. While a small number of highly sophisticated traders purchase depth-of-book products from multiple exchanges, most customers do not. Because most customers would not pay an excessive price for TotalView when substitute data is available from other proprietary sources, the Exchange is constrained in its pricing decisions.

Competition Among Distributors

Competition among Distributors provides another form of price discipline for proprietary data products to ensure that fees are equitable, fair, reasonable and not unfairly discriminatory. If the price of TotalView were set above competitive levels, Distributors purchasing TotalView would be at a disadvantage relative to their competitors, and would therefore either purchase a substitute or forego the product altogether.

In summary, market forces constrain the price of depth-of-book data such as TotalView through competition for order flow, competition from substitute products, and in the competition among vendors for customers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[40] and subparagraph (f)(6) of Rule 19b–4 thereunder.[41]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[40] 15 U.S.C. 78s(b)(3)(A)(iii).

[41] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2017–054 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2017–054. 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 Web site (*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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–054, and should be submitted on or before July 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2017–12267 Filed 6–13–17; 8:45 am]

BILLING CODE 8011–01–P

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80762; File No. SR–DTC–2017–007]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the DTC Settlement Service Guide To Make Technical Revisions To Clarify and Provide Enhanced Transparency With Respect to the Calculation and Adjustment of Required Participants Fund Deposits

May 24, 2017.

Correction

In notice document 2017–11151, beginning on page 25038, in the issue of Wednesday, May 31, 2017, make the following correction:

1. On page 25041, in the first column, in the last sentence, ''June 20, 2017'' should read ''June 21, 2017''.

[FR Doc. C1–2017–11151 Filed 6–13–17; 8:45 am]

BILLING CODE 1301–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80883; File No. SR–CBOE–2017–045]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Penny Pilot Program

June 8, 2017.

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 May 31, 2017, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of Penny Pilot Program through December 31, 2017. The text of the proposed rule change is provided below.

(additions are *in italics;* deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 6.42. Minimum Increments for Bids and Offers

The Board of Directors may establish minimum increments for options traded on the Exchange. When the Board of Directors determines to change the minimum increments, the Exchange will designate such change as a stated policy, practice, or interpretation with respect to the administration of Rule 6.42 within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act and will file a rule change for effectiveness upon filing with the Commission. Until such time as the Board of Directors makes a change to the minimum increments, the following minimum increments shall apply to options traded on the Exchange:

(1) No change.

(2) No change.

(3) The decimal increments for bids and offers for all series of the option classes participating in the Penny Pilot Program are: $0.01 for all option series quoted below $3 (including LEAPS), and $0.05 for all option series $3 and above (including LEAPS). For QQQQs, IWM, and SPY, the minimum increment is $0.01 for all option series. The Exchange may replace any option class participating in the Penny Pilot Program that has been delisted with the next most actively-traded, multiply-listed option class, based on national average daily volume in the preceding six calendar months, that is not yet included in the Pilot Program. Any replacement class would be added on the second trading day following [January 1, 2017] *July 1, 2017.* The Penny Pilot shall expire on [June 30, 2017] *December 31, 2017.*

(4) No change.

. . . Interpretations and Policies:

.01–.04 No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*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 Penny Pilot Program (the ''Pilot Program'') is scheduled to expire on June 30, 2017. CBOE proposes to extend the Pilot Program until December 31, 2017. CBOE believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

During this extension of the Pilot Program, CBOE proposes that it may replace any option class that is currently included in the Pilot Program and that has been delisted with the next most actively traded, multiply listed option class that is not yet participating in the Pilot Program (''replacement class''). Any replacement class would be determined based on national average daily volume in the preceding six months,[5] and would be added on the second trading day following July 1, 2017. CBOE will employ the same parameters to prospective replacement classes as approved and applicable in determining the existing classes in the Pilot Program, including excluding high-priced underlying securities.[6] CBOE will announce to its Trading Permit Holders by circular any replacement classes in the Pilot Program.

CBOE is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class.

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.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed rule change allows for an extension of the Pilot Program for the benefit of market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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 that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. In addition, the Exchange has been authorized to act jointly in extending the Pilot Program and believes the other exchanges will be filing similar extensions.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] 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.

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing.[13] However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. Without a waiver of 30-day operative delay, CBOE's Pilot Program will expire before the extension of the Pilot Program is operative. The Commission believes that waiving the 30-day operative delay for the instant filing is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program. Accordingly, the Commission designates the proposed

[5] The month immediately preceding a replacement class's addition to the Pilot Program (*i.e.,* June) would not be used for purposes of the six-month analysis. Thus, a replacement class to be added on the second trading day following July 1, 2017 would be identified based on The Option Clearing Corporation's trading volume data from December 1, 2016 through May 31, 2017.

[6] *See* Securities Exchange Act Release No. 60864 (October 22, 2009), 74 FR 55876 (October 29, 2009) (SR–CBOE–2009–76).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[14] 17 CFR 240.19b–4(f)(6)(iii).

rule change as operative upon filing with the Commission.[15]

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)[16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2017–045 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–2017–045. 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 Web site (*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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2017–045 and should be submitted on or before July 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–12259 Filed 6–13–17; 8:45 am]

BILLING CODE 8011–01–P

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15117 and #15118; Washington Disaster Number WA–00068]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Washington; Amendment

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Washington (FEMA–4309–DR), dated 04/21/2017.

Incident: Severe Winter Storms, Flooding, Landslides, and Mudslides.

Incident Period: 01/30/2017 through 02/22/2017.

DATES: Effective 05/24/2017.

Physical Loan Application Deadline Date: 06/20/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 01/22/2018.

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.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Washington, dated 04/21/2017, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Ferry, King

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera

Associate Administrator for Disaster Assistance.

[FR Doc. 2017–11181 Filed 6–13–17; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 10032]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: ''Items: Is Fashion Modern?'' Exhibition

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that certain objects to be included in the exhibition ''Items: Is Fashion Modern?,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art, New York, New York, from on or about October 1, 2017, until on or about January 28, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State,

L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Alyson Grunder,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–12247 Filed 6–13–17; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 10033]

60-Day Notice of Proposed Information Collection: U.S. National Commission for UNESCO Laura W. Bush Traveling Fellowship

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to August 14, 2017.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the Internet may comment on this notice by going to *www.Regulations.gov*. You can search for the document by entering ''Docket Number: DOS–2017–0026'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: DCUNESCO@state.gov.*
- *Regular Mail:* Send written comments to: Paul Mungai, Office of Specialized and Technical Agencies, Department of State, 2401 E Street NW., #L409, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Paul Mungai, Office of Specialized and Technical Agencies, Department of State, 2401 E Street NW., #L409, Washington, DC 20037, who may be reached on 202–663–2407 or at *DCUNESCO@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* U.S. National Commission for UNESCO Laura W. Bush Traveling Fellowship.
- *OMB Control Number:* 1405–0180.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of International Organization Affairs, Office of Specialized and Technical Agencies, Executive Secretariat U.S. National Commission for UNESCO (IO/STA).
- *Form Number:* DS–7646.
- *Respondents:* U.S. college and university students applying for a Fellowship.
- *Estimated Number of Respondents:* 100.
- *Total Estimated Number of Responses:* 100.
- *Average Time Per Response:* 10 hours.
- *Total Estimated Burden Time:* 1000.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection: Fellowship applicants, U.S. citizen students at U.S. colleges and universities, will submit descriptions of self-designed proposals for brief travel abroad to conduct work that is consistent with UNESCO's substantive mandate to contribute to peace and security by promoting collaboration among nations through education, science, and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms that are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations. The fellowship is funded through private donations. The information will be reviewed for the purpose of identifying the most meritorious proposals, as measured against the published evaluation criteria.

Methodology: The U.S. Department of State, Bureau of International Organization Affairs, Office of Specialized and Technical Agencies, Executive Secretariat U.S. National Commission for UNESCO (IO/STA) will collect this information via electronic submission.

Paul Mungai,

Acting Executive Director, U.S. National Commission for UNESCO, Bureau of International Organization Affairs, Department of State.

[FR Doc. 2017–12306 Filed 6–13–17; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF STATE

[Delegation of Authority: 429]

Delegation of Authority To Concur With Secretary of Defense on Institution Capacity Building Programs

By virtue of the authority vested in the Secretary of State by the laws of the United States, including section 1 of the State Department Basic Authorities Act (22 U.S.C. 2651a) and 10 U.S.C. 332, I hereby delegate to the Assistant Secretary for Political-Military Affairs, to the extent authorized by law, the authority to concur with the Secretary of Defense on requests to establish Defense Institution Capacity Building Programs pursuant to 10 U.S.C. 332.

Notwithstanding this delegation of authority, any function or authority delegated herein may be exercised by the Secretary, a Deputy Secretary, the Under Secretary for Arms Control and International Security, or by other senior Department officials pursuant to a delegation of authority. Any reference in this delegation of authority to any statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time.

This delegation of authority supersedes Delegation of Authority 410, dated November 30, 2016, and shall be published in the **Federal Register**.

Dated: May 4, 2017.

Rex W. Tillerson,

Secretary of State.

[FR Doc. 2017–12195 Filed 6–13–17; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 10031]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: ''Early Roman Sculpture'' Gallery Exhibition

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that certain objects to be included in an exhibition at the ''Early Roman Sculpture'' Gallery of the The J. Paul Getty Museum at the Getty Villa, imported from abroad for temporary display within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Museum at the Getty Villa, in Malibu California, from on or about August 4, 2017, until on or about September 30, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Alyson Grunder,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–12246 Filed 6–13–17; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Reestablishment

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

ACTION: Announcement of reestablishment of the Commercial Space Transportation Advisory Committee (COMSTAC).

SUMMARY: FAA announces the reestablishment of the COMSTAC, a Federal Advisory Committee that provides information, advice, and recommendations to the Department of Transportation and the Administrator of the Federal Aviation Administration (FAA) on the critical matters facing the U.S. commercial space transportation industry. This reestablishment will take effect 15 days after the publication of this announcement, and will expire after 2 years.

FOR FURTHER INFORMATION CONTACT: Di Reimold, COMSTAC Designated Federal Officer/Executive Director, FAA, Commercial Space Transportation, 800 Independence Avenue SW., Rm. 331, Washington, DC 20591, telephone (202) 267–7635, Email *dorothy.reimold@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FAA is giving notice of the reestablishment the COMSTAC. The primary goals of COMSTAC are to: Evaluate economic, technological, and institutional developments relating to the U.S. commercial space transportation industry; provide a forum for the discussion of problems involving the relationship between industry activities and government requirements; and make recommendations to the FAA Administrator on issues and approaches for Federal policies and programs regarding the industry. COMSTAC membership consists of senior executives from the commercial space transportation industry; representatives from the satellite industry, both manufacturers and users; state and local government officials; representatives from firms providing insurance, financial investment and legal services for commercial space activities; and representatives from academia, space advocacy organizations, and industry associations. Complete information regarding COMSTAC is available on the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/.*

Issued in Washington, DC, June 6, 2017.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2017–12331 Filed 6–13–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The IRS, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning the requirements for reducing the rate of future benefit accrual.

DATES: Written comments should be received on or before August 14, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to LaNita Van Dyke, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Notice of Significant Reduction in the Rate of Future Benefit Accrual.

OMB Number: 1545–1780.

Regulation Project Number: TD 9052 (as amended by TD 9472).

Abstract: This document contains final regulations providing guidance relating to the application of the section 204(h) notice requirements to a pension plan amendment that is permitted to reduce benefits accrued before the plan amendment's applicable amendment date. These regulations also reflect certain amendments made to the section 204(h) notice requirements by the Pension Protection Act of 2006. These final regulations generally affect sponsors, administrators, participants, and beneficiaries of pension plans.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 4,000.

Estimated Time per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 40,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 5, 2017.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–11950 Filed 6–13–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee June 21, 2017, Public Meeting

June 21, 2017.

Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for:

Date: June 21, 2017.

Time: 9:30 a.m. to 4:45 p.m.

Location: Second Floor Conference Room, United States Mint, 801 9th Street NW., Washington, DC 20220.

Subject: Review and discussion of candidate designs for the 2019 Native American $1 Coin; review and discussion of candidate designs for the 2020 Native American $1 Coin; review and discussion of reverse candidate designs for the Apollo 11 50th Anniversary Commemorative Coin Program; review and discussion of candidate designs for the Filipino Veterans of World War II Congressional Gold Medal; review and discussion of candidate designs for the Office of Strategic Services Congressional Gold Medal; review and discussion of a potential 2018 American Liberty 24-karat Gold Fractional Coin; and discussion and election of jurors for the 2019 Apollo 11 50th Anniversary Commemorative Coin Design Competition.

Interested members of the public may either attend the meeting in person or dial in to listen to the meeting at (866) 564–9287/Access Code: 62956028.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

Members of the public interested in attending the meeting in person will be admitted into the meeting room on a first-come, first-serve basis as space is limited. Conference Room A&B can accommodate up to 50 members of the public at any one time. In addition, all persons entering a United States Mint facility must adhere to building security protocol. This means they must consent to the search of their persons and objects in their possession while on government grounds and when they enter and leave the facility, and are prohibited from bringing into the facility weapons of any type, illegal drugs, drug paraphernalia, or contraband.

The United States Mint Police Officer conducting the screening will evaluate whether an item may enter into or exit from a facility based upon federal law, Treasury policy, United States Mint Policy, and local operating procedure; and all prohibited and unauthorized items will be subject to confiscation and disposal.

For Further Information Contact: Betty Birdsong, Acting United States Mint Liaison to the CCAC; 801 9th Street NW., Washington, DC 20220; or call 202–354–7200.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: June 8, 2017.

Jean Gentry,

Chief Counsel, United States Mint.

[FR Doc. 2017–12264 Filed 6–13–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0047]

Agency Information Collection Activity Under OMB Review: Financial Statement

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 14, 2017.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@*

omb.eop.gov. Please refer to ''OMB Control No. 2900–0047'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0047'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Pub. L. 89 754 1013, 8 U.S.C. 3702(b)(2), 38 U.S.C. 3714.

Title: Financial Statement (VA Form 26–6807).

OMB Control Number: 2900–0047.

Type of Review: Extension of a currently approved collection.

Abstract: The major use of the form is to determine a borrower's financial condition in connection with efforts to reinstate a seriously defaulted, guaranteed, insured, or portfolio loan. In addition, the form is used in determining the financial feasibility of a veteran or service member to obtain a home with the assistance of a Specially Adapted Housing Grant under 38 U.S.C., Chapter 21. Also, VA Form 26–6807 may be used to establish eligibility of homeowners for aid under the Homeowners Assistance Program, Public Law 89–754, which provides assistance by reducing losses incident to the disposal of homes when military installations at which the homeowners were employed or serving are ordered closed in whole or in part. Finally, the form is used in release of liability and substitution of entitlement cases. Under the provisions of 38 U.S.C. 3714, the Department of Veterans Affairs (VA) may release original veteran obligors from personal liability arising from the original guaranty of their home loans, or the making of a direct loan, provided purchasers/assumers meet the necessary requirements, among which is qualifying from a credit standpoint. Substitution of entitlement is authorized by 38 U.S.C. 3702(b)(2) and prospective veteran-assumers must also meet the creditworthiness requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 51 on March 17, 2017, page 14278.

Affected Public: Individuals or Households.

Estimated Annual Burden: 2,250 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2017–12276 Filed 6–13–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0067]

Agency Information Collection Activity: Application for Automobile or Other Conveyance and Adaptive Equipment

AGENCY: Veterans Benefit Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefit 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 extension 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 August 14, 2017.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0067'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

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: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Application for Automobile or Other Conveyance and Adaptive Equipment (Under 38 U.S.C. 3901–3904) (VA Form 21–4502).

OMB Control Number: 2900–0067.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4502 is used to gather the necessary information to determine if a veteran or serviceperson is entitled to an automobile allowance and adaptive equipment.

Affected Public: Individuals and households.

Estimated Annual Burden: 388 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 1,552.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2017–12279 Filed 6–13–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0041]

Agency Information Collection Under OMB Review: Compliance Inspection Report

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the

Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 14, 2017.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov*. Please refer to ''OMB Control No. 2900–0041'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov*. Please refer to ''OMB Control No. 2900–0041'' in any correspondence.

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: Public Law 104–13; 44 U.S.C. 3501–21.

Title: Compliance Inspection Report (VA Form 26–1839).

OMB Control Number: 2900–0041.

Type of Review: Extension of an approved collection.

Abstract: Fee-compliance inspectors complete VA Form 26–1839 during their inspection on properties under construction. The inspections provide a level of protection to Veterans by assuring them and VA that the adaptation are in compliance with the plans and specifications for which a specially adapted housing grant is based. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice 60-day public comment period, soliciting comments on this collection of information, was published at Volume 82 FR 51, on Friday, March 17, 2017, pages 14278–14279.

Affected Public: Individuals or households.

Estimated Annual Burden: 900 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 3,600.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2017–12275 Filed 6–13–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0059]

Agency Information Collection Activity Under OMB Review: Statement of Person Claiming To Have Stood in Relation of Parent

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 14, 2017.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0059'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov*. Please refer to ''OMB Control No. 2900–0059'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Statement of Person Claiming to Have Stood in Relation of Parent (VA Form 21P–524).

OMB Control Number: 2900–0059.

Type of Review: Extension of a currently 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.

38 U.S.C. 1310 established Dependency and Indemnity Compensation (DIC), a benefit payable to the survivors of a Veteran who dies from a service-connected or compensable disability.

38 U.S.C. 1315 established Dependency and Indemnity Compensation to parents (known as Parents' DIC). Parents' DIC is monthly benefit payable to the surviving parent(s) of a deceased Veteran. The monthly benefit payable is dependent of the parent(s) based on the parent's (parents') annual income. An additional monthly amount is payable if the parent is a patient in a nursing home, blind, or 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.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 8562 on January 26, 2017.

Affected Public: Individuals or Households.

Estimated Annual Burden: 800 hours.

Estimated Average Burden per Respondent: 120 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 400.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2017–12277 Filed 6–13–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0028]

Agency Information Collection Activity Under OMB Review: Request for and Consent To Release of Information From Claimant's Records

AGENCY: Office of Information and Technology, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Information and Technology (OIT), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information used 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 revision of a currently approved collection. This notice solicits comments for information needed from service organizations requesting to be placed on VA's mailing lists for specific publications; to request additional information from the correspondent to identify a veteran; to request for and consent to release of information from claimant's records to a third party; and to determine an applicant's eligibility to receive a list of names and addresses of Veterans and their dependents.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 14, 2017.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov*. Please refer to ''2900–0028'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov*. Please refer to ''2900–0028'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Titles:

a. Application of Service Representative for Placement on Mailing List, VA Form 3215.

b. Request for and Consent to Release of Information from Claimant's Records, VA Form 3288.

c. Request to Correspondent for Identifying Information, VA Form Letter 70–2.

d. 38 CFR 1.519(A) Lists of Names and Addresses.

OMB Control Number: 2900–0028.

Type of Review: Extension without change of a currently approved collection.

Abstract:

a. VA operates an outreach services program to ensure Veterans and beneficiaries have information about benefits and services to which they may be entitled. To support the program, VA distributes copies of publications to Veterans Service Organizations' representatives to be used in rendering services and representation of veterans, their spouses and dependents. Service organizations complete VA Form 3215 to request placement on a mailing list for specific VA publications.

b. Veterans or beneficiaries complete VA Form 3288 to provide VA with a written consent to release his or her records or information to third parties such as insurance companies, physicians and other individuals.

c. VA Form Letter 70–2 is used to obtain additional information from a correspondent when the incoming correspondence does not provide sufficient information to identify a Veteran. VA personnel use the information to identify the Veteran, determine the location of a specific file, and to accomplish the action requested by the correspondent such as processing a benefit claim or file material in the individual's claims folder.

d. Title 38 U.S.C. 5701(f)(1) authorized the disclosure of names or addresses, or both of present or former members of the Armed Forces and/or their beneficiaries to nonprofit organizations (including members of Congress) to notify Veterans of Title 38 benefits and to provide assistance to Veterans in obtaining these benefits. This release includes VA's Outreach Program for the purpose of advising Veterans of non-VA Federal State and local benefits and programs.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 61 on Friday, March 31, 2017, pages 16088–16089.

Affected Public: Individuals or households, Not for profit institutions, and State, local or tribal government.

Estimated Annual Burden:

a. Application of Service Representative for Placement on Mailing List, VA Form 3215—25 hours.

b. Request for and Consent to Release of Information From Claimant's Records, VA Form 3288—18,875 hours.

c. Request to Correspondent for Identifying Information, VA Form Letter 70–2—3,750 hours.

d. 38 CFR 1.519(A) Lists of Names and Addresses—50 hours.

Estimated Average Burden per Respondent:

a. Application of Service Representative for Placement on Mailing List, VA Form 3215—10 minutes.

b. Request for and Consent to Release of Information From Claimant's Records, VA Form 3288—7.5 minutes.

c. Request to Correspondent for Identifying Information, VA Form Letter 70–2—5 minutes.

d. 38 CFR 1.519(A) Lists of Names and Addresses—60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Application of Service Representative for Placement on Mailing List, VA Form 3215—150.

b. Request for and Consent to Release of Information From Claimant's Records, VA Form 3288—151,000.

c. Request to Correspondent for Identifying Information, VA Form Letter 70–2—45,000.

d. 38 CFR 1.519(A) Lists of Names and Addresses—50.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2017–12274 Filed 6–13–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0660]

Agency Information Collection Activity Under OMB Review: Request for Contact Information

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the VBA, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 14, 2017.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0660'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0660'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Request for Contact Information (VA Form Letter 21–30).

OMB Control Number: 2900–0660.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 21–30 is used to locate a fiduciary, beneficiary, claimant, or witness when a field examination is necessary in order to gather information that is needed to maintain program integrity. Without this information, continued entitlement to the benefits could not be determined.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 35 on February 23, 2017, pages 11498 and 11499.

Affected Public: Individuals or Households.

Estimated Annual Burden: 1,250.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 5,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2017–12278 Filed 6–13–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0670]

Agency Information Collection Activity: Fiduciary Statement in Support of Appointment

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans 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 extension 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 August 14, 2017.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0670'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

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: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Fiduciary Statement in Support of Appointment (VA Form 21P–0792)

OMB Control Number: 2900–0670.

Type of Review: Revision of an already approved collection.

Abstract: VA Form 21P–0792 will be completed by individuals who are seeking to be appointed as fiduciaries of VA beneficiaries. The information will be used by VA field examiners to determine whether an individual is an appropriate fiduciary for a VA beneficiary and make an inquiry into his or her credit and criminal background.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,750 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 43,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2017–12310 Filed 6–13–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0491]

Agency Information Collection Activity: Community Residential Care Recordkeeping Requirements

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration (VHA), 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 August 14, 2017.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Cynthia Harvey-Pryor, Office of Information and Technology (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *Cynthia.Harvey-Pryor@va.gov.* Please refer to ''OMB Control No. 2900–0491'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

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, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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 CFR 17.63.

Title: Community Residential Care Recordkeeping Requirements

OMB Control Number: 2900–0491.

Type of Review: Reinstatement of a previously approved collection.

Abstract: One of the standards a CRC must meet is the requirement that the CRC must maintain records on each resident in a secure place. Facility records must include emergency notification procedures and a copy of all signed agreements with the resident. 38 CFR 17.63(i). These records must be maintained by the CRC, and review and the CRC must make those records available for VA inspection upon request. A Medical Foster Home is a subtype of CRC and is required to comply with the record keeping requirements of 38 CFR 17.63(i). See 38 CFR 17.74(q). In addition, the CRC must maintain and make available upon request of the approving official, records related to CRC staff requirements, and provide that the CRC must have sufficient, qualified staff must be on duty and available to care for the resident and ensure the health and safety of each resident.

Affected Public: Individuals and households.

Estimated Annual Burden: 1,095 hours.

Estimated Average Burden per Respondent: 90 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 730.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2017–12309 Filed 6–13–17; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 82 Wednesday,
No. 113 June 14, 2017

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 301
Centralized Partnership Audit Regime; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

RIN 1545–BN77

[REG–136118–15]

Centralized Partnership Audit Regime

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking, notice of public hearing, and withdrawal of notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding implementation of section 1101 of the Bipartisan Budget Act of 2015 (BBA), which was enacted into law on November 2, 2015. Section 1101 of the BBA repeals the current rules governing partnership audits and replaces them with a new centralized partnership audit regime that, in general, assesses and collects tax at the partnership level. These proposed regulations provide rules for partnerships subject to the new regime, including procedures for electing out of the centralized partnership audit regime, filing administrative adjustment requests, and the determination of amounts owed by the partnership or its partners attributable to adjustments that arise out of an examination of a partnership. The proposed regulations also address the scope of the centralized partnership audit regime and provide definitions and special rules that govern its application, including the designation of a partnership representative. The proposed regulations affect partnerships for taxable years beginning after December 31, 2017 and any partnerships that elect application of the centralized partnership audit regime pursuant to § 301.9100–22T for taxable years beginning after November 2, 2015 and before January 1, 2018. This document also provides notice of a public hearing on these proposed regulations. This document also withdraws the notice of proposed rulemaking published in the **Federal Register** on February 13, 2009 (74 FR 7205), regarding the conversion of partnership items related to listed transactions.

DATES: Written or electronic comments must be received by August 14, 2017. Outlines of topics to be discussed at the public hearing scheduled for September 18, 2017, at 10 a.m. must be received by August 14, 2017.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–136118–15), Room 5207, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (REG–136118–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–136118–15).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jennifer Black of the Office of Associate Chief Counsel (Procedure and Administration), (202) 317–6834; concerning the submission of comments and requests for a public hearing, Regina Johnson, (202) 317–6901 (not toll-free numbers).

Background

This document contains proposed regulations to amend the Procedure and Administration Regulations (26 CFR part 301) under Subpart—Tax Treatment of Partnership Items to implement the centralized partnership audit regime enacted by section 1101 of the BBA, Public Law 114–74.

1. In General

The BBA was enacted on November 2, 2015, and was amended by the Protecting Americans from Tax Hikes Act of 2015, Public Law 114–113, div. Q (PATH Act) on December 18, 2015. Section 1101(a) of the BBA removes subchapter C of chapter 63 of the Internal Revenue Code (Code) effective for partnership taxable years beginning after December 31, 2017. Subchapter C of chapter 63 contains the unified partnership audit and litigation rules that were enacted as part of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248 (TEFRA). These partnership audit and litigation rules are commonly referred to as the TEFRA partnership procedures or simply TEFRA.

Section 1101(b) of the BBA also removes subchapter D of chapter 63 of the Code (subchapter D) and part IV of subchapter K of chapter 1 of the Code (part IV of subchapter K), rules applicable to electing large partnerships, effective for partnership taxable years beginning after December 31, 2017. Subchapter D contains the audit rules for electing large partnerships, and part IV of subchapter K prescribes the income tax treatment for such partnerships.

Section 1101(c) of the BBA replaces the rules to be removed by section 1101(a) and (b) with a centralized partnership audit regime. Section 1101(c) adds a new subchapter C to chapter 63, consisting of sections 6221 through 6241 of the Code. The BBA also makes related and conforming amendments to other provisions of the Code.

Pursuant to section 1101(g)(1) of the BBA, the amendments made by section 1101, which repeal the TEFRA partnership procedures and the rules applicable to electing large partnerships and which create the centralized partnership audit regime, generally apply to returns filed for partnership taxable years beginning after December 31, 2017. Section 1101(g)(2) provides that, in the case of an administrative adjustment request under section 6227 as amended by the BBA, the amendments made by section 1101 apply to requests with respect to returns filed for partnership taxable years beginning after December 31, 2017. Similarly, section 1101(g)(3) provides that, in the case of an election to use the alternative to payment of the imputed underpayment by the partnership under section 6226 as amended by the BBA, the amendments made by section 1101 apply to elections with respect to returns filed for partnership taxable years beginning after December 31, 2017.

Section 1101(g)(4) provides that a partnership may elect (at such time and in such form and manner as the Secretary may prescribe) for the amendments made under section 1101 (other than the election out of the centralized partnership audit regime under section 6221(b) as added by the BBA) to apply to any return of a partnership filed for partnership taxable years beginning after November 2, 2015 (the date of the enactment of the BBA) and before January 1, 2018.

On December 18, 2015, President Obama signed into law the PATH Act. Section 411 of the PATH Act corrects and clarifies certain amendments made by the BBA. The amendments under the PATH Act are effective as if included in section 1101 of the BBA, and therefore, subject to the effective dates in section 1101(g) of the BBA.

On August 5, 2016, the Treasury Department and the IRS published temporary regulations (TD 9780, 81 FR 51795) and a notice of proposed rulemaking (REG–105005–16, 81 FR 51835) in the **Federal Register**. The temporary regulations set forth in § 301.9100–22T provide the time, form, and manner for a partnership to make an election pursuant to section

1101(g)(4) of the BBA to have the centralized partnership audit regime apply to any of its partnership returns filed for a partnership taxable year beginning after November 2, 2015 and before January 1, 2018. Section 301.9100–22T(a) provides the general rule that a partnership may elect at the time and in such form and manner as described in § 301.9100–22T for amendments made by section 1101 of the BBA, except section 6221(b) added by the BBA, to apply to any return of the partnership filed for an eligible taxable year (as defined in § 301.9100–22T(d)).

On December 6, 2016, Congress introduced the Tax Technical Corrections Act of 2016 (H.R. 6439, S. 3506) (Tax Technical Corrections Act) which contains what are described as technical corrections to the centralized partnership audit regime and other corrections to the Bipartisan Budget Act of 2015. The Tax Technical Corrections Act addresses a number of the provisions of the centralized partnership audit regime enacted as part of BBA. The Tax Technical Corrections Act, however, was not enacted by Congress.

2. Specific Provisions

A. Scope of the Centralized Partnership Audit Regime

Section 6221(a), as added by the BBA, provides the scope of items that are subject to adjustment under the centralized partnership audit regime. That section provides that any adjustment to items of income, gain, loss, deduction, or credit of a partnership for a partnership taxable year (and any partner's distributive share thereof) shall be determined, and any tax attributable thereto shall be assessed and collected, at the partnership level. The applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to any such item or share shall also be determined at the partnership level.

Prior to the enactment of TEFRA, any adjustment to an item attributable to a partner's interest in a partnership required the IRS to open an examination for each partner and follow deficiency procedures to adjust items from a partnership and determine the resulting tax. Separate proceedings for each partner often resulted in inconsistent treatment of various partners with respect to the same items from a partnership. In some cases, inconsistent results occurred in the partner-level examinations themselves. In other cases, not all partners allocated the same items from the partnership were subject to an IRS examination because, for instance, the period of limitations on assessment had expired for some, but not all, partners. In addition, each partner could challenge the IRS adjustment in separate partner-level proceedings in different litigation forums and appellate venues, resulting in different outcomes with respect to the same partnership item. Over time, the size and complexity of partnerships increased, multiplying the disparate treatment of partners with respect to the same items from a partnership and increasing the burden on the IRS in examining and assessing tax related to partnership issues at the partner level.

In 1982, in response to these difficulties, Congress enacted the TEFRA partnership procedures to establish unified rules to allow the IRS to make adjustments to ''partnership items'' at the partnership level in one proceeding. Partnership items are those items that are more appropriately determined at the partnership level than at the partner level, as provided by regulation. Section 6231(a)(3) (prior to amendment by the BBA). The regulations under section 6231 (prior to amendment by the BBA) define partnership items by listing the items that are more appropriately adjusted at the partnership level within the framework of TEFRA. § 301.6231(a)(3)–1. Items on a partner return that are not partnership items are not subject to adjustment at the partnership level by the IRS under TEFRA, but rather are adjusted with respect to each partner at the partner level in a proceeding outside of the TEFRA regime (generally, under deficiency procedures).

Once a TEFRA proceeding is final, the IRS makes corresponding computational adjustments to each partner's return to reflect the proper treatment of partnership items. Section 6230(a)(1) (prior to amendment by the BBA). A computational adjustment may include adjustments to ''affected items'' of the partner. § 301.6231(a)(6)–1. An ''affected item'' is any item on a partner's return that is affected by a partnership item. Section 6231(a)(5) (prior to amendment by the BBA). When making a computational adjustment, if partner-level factual determinations are necessary to properly determine the tax, the IRS is required to follow the deficiency procedures at the partner level. Section 6230(a)(2)(A)(i) (prior to amendment by the BBA). Any item on the partner's return that is neither a partnership item nor an affected item is not subject to TEFRA and must be adjusted in a separate deficiency proceeding. *See, e.g., Bedrosian* v. *Commissioner,* 144 T.C. 152, 159 (2015); *see also* section 6230(a)(2)(B) (prior to amendment by the BBA), *Desmet* v. *Commissioner,* 581 F.3d 297, 302 (6th Cir. 2009).

The TEFRA partnership procedures automatically exempt certain partnerships with ten or fewer direct partners. Section 6231(a)(1)(B) (prior to amendment by the BBA). For those small partnerships, the IRS must follow deficiency procedures for each partner, which requires the IRS to adjust items from the partnership on each partner's return and to assess the resulting tax subject to the deficiency procedures in a separate proceeding at the partner level.

Since the enactment of TEFRA, the number and complexity of partnerships have continued to increase. The number of large partnerships, in particular, has increased dramatically. In 1997, Congress recognized some of the difficulties facing the IRS under TEFRA when auditing complex, large partnership structures and in response enacted a streamlined, elective audit regime for certain large partnerships (ELP regime). Sections 6240 through 6255 (prior to amendment by the BBA). The ELP regime allowed certain partnerships with 100 or more partners to elect the application of simplified reporting rules and a centralized audit regime with features similar to the regime enacted under the BBA. The ELP regime was a legislative response to the recognition that:

> [a]udit procedures for large partnerships are inefficient and more complex than those for other large entities. The IRS must assess any deficiency arising from a partnership audit against a large number of partners, many of whom cannot easily be located and some of whom are no longer partners. In addition, audit procedures are cumbersome and can be complicated further by the intervention of partners acting individually.

Joint Comm. on Taxation, JCS–23–97, *General Explanation of Tax Legislation Enacted in 1997,* 363 (1997).

Since 1997, the number and complexity of partnerships has continued to increase, reflecting a shift in how business entities are structured—toward partnerships and away from C corporations. The ELP regime attempted to address some of the difficulties the IRS faced auditing large partnerships under TEFRA; however, the ELP regime is elective and only a handful of partnerships elected application of the ELP regime.

In 2013, Congress requested that the Government Accountability Office (GAO) investigate partnerships and the IRS's audit rate of partnerships. The GAO report concluded that from 2002 to 2011 ''the number of large partnerships

with 100 or more direct and indirect partners as well as $100 million or more in assets more than tripled to 10,099—an increase of 257 percent.'' U.S. Gov't Accountability Office, GAO–14–732, *Large Partnerships: With Growing Number of Partnerships, IRS Needs to Improve Audit Efficiency,* 13 (2014) (GAO–14–732). And yet, as the number of large partnerships increased, the number of partnership audits did not keep pace. Compared to the audit rate for large corporations, which was 27.1 percent in 2012, the audit rate for large partnerships was much lower at 0.8 percent. (Large partnership is defined for purposes of the GAO report as a partnership with 100 or more direct and indirect partners and $100 million or more in assets.) GAO–14–732, cover page, summary.

When the IRS completes an examination of a large partnership under TEFRA, the IRS must pass the audit adjustments to partnership items on to the ultimate partners, a complex and time-consuming process. This requires the IRS to link potentially thousands of partner returns, including through tiers of partners that are themselves partnerships, to determine the proper share of the adjustments for each ultimate partner flowing from adjustments to partnership items. This process is ''paper and labor intensive. When hundreds of partners' returns have to be adjusted, the costs involved limit the number of audits IRS can conduct.'' GAO–14–732, cover page, summary. In the meantime, while the IRS is determining these linkages, the period of limitations for the IRS to assess tax with respect to each partner continues to run.

Specifically, the GAO reported that without ''legislative action, the IRS's ability [to effectively audit]'' partnerships would not improve. GAO–14–732, cover page, summary. At the time of the 2014 GAO report, Congress and the Administration had put forth legislative proposals that ''would allow IRS to collect tax at the partnership level instead of having to pass it through to the taxable partners.'' GAO–14–732 at 31.

In 2015, Congress enacted the BBA to replace the TEFRA partnership procedures and the ELP regime with the centralized partnership audit regime, which contained many aspects of the legislative proposals referenced in the GAO report. The centralized partnership audit regime, when fully effective for partnership taxable years beginning after December 31, 2017, will be the exclusive method by which the IRS may audit a partnership in one unified proceeding. For those partnerships that will be subject to the centralized partnership audit regime that were previously exempt from TEFRA (for example, a partnership with no more than 10 partners, none of which is a pass-through entity), the centralized partnership audit regime replaces the separate partner-level deficiency proceedings as the sole method for auditing the partnership unless an eligible partnership elects out of the centralized regime.

The centralized partnership audit regime enacted in the BBA addresses many of the shortcomings of TEFRA identified by the GAO and practitioners. For instance, ''unlike prior law, distinctions between partnership items and affected items are no longer made'' in the centralized partnership audit regime. Joint Comm. on Taxation, JCS–1–16, *General Explanations of Tax Legislation Enacted in 2015,* 57 (2016) (JCS–1–16). Instead, section 6221(a) provides that the centralized partnership audit regime applies to any adjustment to items of income, gain, loss, deduction, or credit of a partnership for a partnership taxable year and any partner's distributive share thereof.

Under TEFRA, the statute broadly defines a partnership item as any item more appropriately determined at the partnership level. Section 6231(a)(3) (prior to amendment by the BBA). In keeping with the statute, the regulations under TEFRA broadly define the term partnership item to include all items of income, gain, deduction, loss, or credit, as well as other related items such as expenditures, tax preferences, exempt income, partnership liabilities, guaranteed payments, certain basis adjustments, character and the percentage of partnership interests, and items arising from the determination at the partnership level of partnership assets, investments, transactions and operations, such as investment tax credits and at risk rules. See generally § 301.6231(a)(3)–1.

Nothing in the text or legislative history of the BBA, or the events leading to enactment of the new regime, indicates that Congress's use of the phrase ''income, gain, deduction, loss, or credit'' in section 6221(a) was intended to adopt a more limited set of items to be adjusted at the partnership level than the items included in the broad definition of partnership items under the TEFRA regulations. It would be illogical to conclude that Congress intended to limit the scope of what the IRS could adjust at the partnership level under an expanded centralized partnership audit regime. Such a narrow interpretation could mean that rather than increase the ability of the IRS to audit large partnerships in one unified proceeding, BBA would significantly increase the number of issues affecting partnerships that the IRS would be required to audit at the partner level, meaning that in large partnerships with thousands of partners, the IRS would have to audit issues related to the same partnership multiple times, for each partner, rather than just once at the partnership level. Given the GAO's criticism in GAO–14–732 of the low partnership audit rate, it does not follow that Congress enacted a new partnership audit regime that weakens the IRS's ability to conduct audits at the partnership level and forces the IRS to open additional partner-level proceedings to re-audit the same partnership.

The centralized partnership audit regime purposefully avoids the terms partnership items, affected items, computational adjustments, and nonpartnership items that caused so much litigation under TEFRA and does so by adopting the single phrase ''income, gain, deduction, loss, or credit'' as the scope of the regime. Removing the distinctions between the different types of items and adjustments was an effort to streamline the examination and judicial process to allow centralized collection of the correct amount of tax had the partnership and the partners reported items from the partnership correctly. The centralized partnership audit regime limits the burden on the IRS in both the examination of partnerships and the judicial process—changes that were designed to increase the ability of the IRS to audit large partnerships. IRS received comments in response to Notice 2016–23, 2016–13 I.R.B. 490, that agreed that the use of the term ''income, gain, deduction, loss, or credit'' in the centralized partnership audit regime was an attempt to reduce the challenges the IRS faced under TEFRA and does not limit the scope of items subject to audit, assessment, and collection at the partnership level.

Under the centralized partnership audit regime, the IRS is no longer required to determine each partner's share of the adjustments made to partnership items followed by a separate computational adjustment for each partner to assess the correct tax due as a result of the partnership audit. Instead, under the default rules of section 6225, the partnership is liable for an imputed underpayment based on the adjustments made at the partnership level. The imputed underpayment calculation may, for some partnerships, overstate the amount of tax due had the

partnership and partners reported the partnership adjustments properly. To correct potential overstatements, the centralized partnership audit regime includes modification procedures and provides additional discretionary authority for the IRS to further modify imputed underpayments to carry out the function of the modification provision. The Joint Committee on Taxation observed that the intent of the modification provision is to ''determine the amount of tax due as closely as possible to the tax due if the partnership and partners had correctly reported and paid while at the same time to implement the most efficient and prompt assessment and collection of tax attributable to the income of the partnership and partners.'' JCS–1–16 at 65–66.

To reach the correct amount of tax, the IRS makes one set of adjustments at the partnership level and allows the partnership, through modification, to adjust the imputed underpayment amount down to the correct amount of tax. To determine the amount of an imputed underpayment that reflects ''tax due as closely as possible to the tax due if the partnership and partners had correctly reported and paid,'' the breadth of what the IRS must be able to adjust at the partnership level must be at least as broad as the different type of adjustments made under TEFRA.

Furthermore, under the modification provisions, the partnership (and its partners if they may amend their returns) takes on the burden of further refining the adjustments to reflect the correct amount of tax. Where all partners amend their returns taking all of the adjustments into account, the IRS, the partnership and its partners have effectively mirrored the result of a TEFRA audit, including the final partner-level computational adjustments. This can only be possible if the scope of what the IRS may adjust at the partnership level is sufficiently broad.

As such, the proposed regulations take an expansive view of the scope of the centralized partnership audit regime to cover all items and information related to or derived from the partnership. Accordingly, under proposed § 301.6221(a)–1 all items required to be shown or reflected on the partnership's return and information in the partnership's books and records related to a determination of such items, as well as factors that affect the determination of items of income, gain, loss, deduction, or credit, are subject to determination and adjustment at the partnership level under the centralized partnership audit regime.

B. Election Out of the Centralized Partnership Audit Regime

In general, the centralized partnership audit regime applies to all partnerships with partnership taxable years beginning after December 31, 2017 for any partnership (domestic or foreign) required to file a return under section 6031. Section 6241(1). Section 6221(b), as added by the BBA, allows eligible partnerships to elect out of the centralized partnership audit regime. The fact that all partnerships are covered by the centralized partnership audit regime unless they elect out distinguishes the centralized partnership audit regime from the TEFRA partnership procedures. Under TEFRA, only partnerships with more than 10 partners and partnerships with at least one partner that is not a U.S. individual, a C corporation, or an estate of a deceased partner are automatically covered by the regime. Section 6231(a)(1)(B) (prior to amendment by the BBA). However, partnerships not automatically subject to TEFRA can make an affirmative election into TEFRA. Section 6231(a)(1)(B)(ii) (prior to amendment by the BBA).

Partnerships that elect out of the centralized partnership audit regime are subject to the pre-TEFRA audit procedures under which the IRS must separately assess tax with respect to each partner under the deficiency procedures under subchapter B of chapter 63. As described in section 2.A. of the Background section of this preamble, enactment of TEFRA was a reaction to the complexity and burden of the pre-TEFRA deficiency procedures in the case of partnerships; however, since TEFRA was enacted, the IRS and taxpayers have identified numerous issues with that regime. The centralized partnership audit regime is intended to simplify TEFRA's burdensome processes and to increase the IRS's ability to examine partnerships, particularly large and tiered partnerships, and to make the process of assessing tax resulting from those audits more efficient. The limited opt-out nature of the centralized partnership audit regime, which requires the partnership to take affirmative action to elect out of the regime, increases the likelihood that a partnership will be subject to the more streamlined adjustment, assessment, and collection procedures of the centralized partnership audit regime, thereby increasing the number of partnerships the IRS is able to examine under the centralized partnership audit regime. Limiting the number of partnerships that can elect out of the centralized partnership audit regime to those entities specifically permitted under the statute is necessary to carry out this goal.

There are two conditions that must be met for a partnership to be eligible to elect out of the centralized partnership audit regime. First, a partnership must have 100 or fewer partners. Under the statute, a partnership has 100 or fewer partners when it is required to furnish 100 or fewer statements under section 6031(b), currently Schedule K–1, *Partner's Share of Income, Deductions, Credits, etc.* (Schedules K–1), for the taxable year. Section 6221(b)(1)(B). For partnerships that have an S corporation as a partner (S corporation partner), special rules under section 6221(b)(2)(A) apply for purposes of determining the number of Schedules K–1 furnished by the partnership. Under that rule, the number of statements required to be furnished by the S corporation partner to its own shareholders under section 6037(b) for the taxable year, currently Schedule K–1, *Shareholder's Share of Income, Deductions, Credits, etc.,* are taken into account to determine the number of statements furnished by the partnership for purposes of section 6221(b)(1)(B). Section 6221(b)(2)(A)(ii).

Second, a partnership must only have eligible partners. Under the statute, eligible partners are individuals, C corporations, foreign entities that would be treated as C corporations if they were domestic, S corporations, and estates of deceased partners. Section 6221(b)(1)(C). Under section 6221(b)(1)(D)(i), a partnership may elect out of the centralized partnership audit regime only on a timely filed return for a taxable year (including extensions).

A partnership must include, in the manner prescribed by the Secretary, a disclosure of the name and taxpayer identification number (TIN) of each partner of the partnership. Section 6221(b)(1)(D)(ii). In the case of an election out by a partnership with an S corporation partner, the election also must include, in the manner prescribed by the Secretary, a disclosure of the name and TIN of each person to whom an S corporation partner is required to furnish a statement for the taxable year of the S corporation ending with or within the partnership taxable year that is subject to the election. Section 6221(b)(2)(A)(i). A partnership must notify each partner of the election in the manner prescribed by the Secretary. Section 6221(b)(1)(E).

Section 6221(b)(2)(B) permits the Secretary to prescribe alternative identification procedures for foreign partners. The Secretary may by

regulation or other guidance prescribe rules similar to the rules applicable to S corporations with respect to any partners not described in section 6221(b)(1)(C). Section 6221(b)(2)(C).

C. Consistent Treatment

i. Consistent Treatment Under TEFRA

TEFRA includes a requirement that a partner treat items from the partnership consistent with the partnership's treatment of such items on the partnership's return. Section 6222 (prior to amendment by the BBA). TEFRA permits the partner to notify the IRS of inconsistent treatment of an item by the partner on the partner's return and avoid having a computational adjustment made to the inconsistently treated item without the IRS first completing a proceeding at the partnership level. The IRS could either accept the partner's inconsistent treatment of the item, open up an audit of the partnership to address the item at the partnership level, or open up audit of the partner to address the inconsistent item. If the IRS examined the partnership or the partner, all items for that taxable year would be subject to the examination.

Section 6222, as amended by the BBA, includes a similar requirement of consistency and rules for notification of the inconsistency, but the consequences of failing to treat items consistently are different. Under TEFRA, the consequence of filing inconsistently is that the IRS is not required to conduct a partnership-level proceeding before making computational adjustments at the partner level and assessing any deficiency attributable to the adjustment of an item to make it consistent with the partnership return. Section 6222 now states that any underpayment of tax by a partner resulting from a failure to treat an item consistently shall be assessed and collected as if the underpayment were on account of a mathematical or clerical error appearing on the partner's return, permitting the IRS to immediately assess and collect such tax.

ii. Statutory Provision

Section 6222(a) requires a partner to treat on the partner's return each item of income, gain, loss, deduction or credit attributable to a partnership subject to subchapter C of chapter 63 in a manner that is consistent with the treatment of such item on the partnership return. If the partner fails to comply with the requirements of section 6222(a), any underpayment of tax resulting from that failure may be assessed and collected as if such underpayment were on account of a mathematical or clerical error appearing on the partner's return. Section 6222(b). The procedures under section 6213(b)(2), which permit a taxpayer to request an abatement of a mathematical or clerical error assessment, do not apply in these situations. Section 6222(b).

Section 6222(c) provides an exception for situations in which a partner notifies the IRS of the inconsistent treatment on the partner's return. Under section 6222(c)(1), if the partnership has filed a return and the partner's treatment of an item on the partner's return is (or may be) inconsistent with the treatment of that item on the partnership return, the provisions of section 6222(a) (requiring consistent treatment) and (b) (allowing math error treatment to adjust inconsistent items) will not apply to that item if the partner files with the Secretary a statement identifying the inconsistency. Section 6222(c)(1)(A)(i). The exception also applies if the partnership has not filed a return, and the partner files a statement identifying the inconsistency. Section 6222(c)(1)(A)(ii).

In cases where a partner receives incorrect information in a statement furnished by a partnership, section 6222(c)(2) provides that the partner is treated as having notified the IRS of an inconsistency if the partner satisfactorily demonstrates to the Secretary that the treatment of the item on the partner's return is consistent with the treatment of the item on the statement furnished to that partner by the partnership, and the partner elects to have this provision apply. Under section 6222(d), any final decision with respect to an inconsistent position identified under section 6222(c) in a proceeding to which the partnership is not a party is not binding on the partnership.

D. Partnership Representative and Partners Bound by Actions of the Partnership

Section 6223 provides that each partnership shall designate in the manner prescribed by the Secretary a partner or other person with a substantial presence in the United States as the partnership representative who shall have the sole authority to act on behalf of the partnership. Section 6223(a). In any case in which such designation is not in effect, the statute provides that the Secretary may select any person as the partnership representative. Section 6223(a). A partnership and all partners of such partnership are bound by actions taken under subchapter C of chapter 63 by the partnership and by any final decision in a proceeding brought under subchapter C of chapter 63 with respect to the partnership. Section 6223(b).

Section 6223 and the concept of the partnership representative replace the tax matters partner (TMP) framework that exists under the TEFRA partnership procedures. Under TEFRA, a partnership is required to designate a TMP who acts as a liaison between the partnership and the IRS. That TMP must be a general partner and may be an individual or an entity.

The requirements placed on the designation of the TMP under TEFRA make it difficult in many cases to identify a qualified TMP. First, only general partners of the partnership may be the TMP. Because the TMP has to be a partner, the partnership cannot designate a non-partner, such as a non-partner manager, even if that person is in the best position to understand and have available the partnership's books and records. In some cases, the TMP has to be a particular partner, such as the partner with the highest profits interest, who may not be knowledgeable about the partnership's taxes. See, for example, § 301.6231(a)(7)–1(m)(2).

Even if a qualified TMP is identified, the IRS may be unable to contact the TMP because the TMP is out of the country or simply unreachable. Furthermore, in the case of a TMP that is an entity rather than an individual, the IRS must identify and track down an individual who can act for the entity. As a result, under TEFRA, partnerships and the IRS may spend a significant amount of time determining whether a person designated is even eligible to serve as the TMP before the IRS can proceed with a partnership examination.

Additionally, while the TMP has the authority to bind the partnership, it cannot bind other partners in the partnership. A partner who is not the TMP also has rights during an examination, including certain notification rights and the right to participate in the proceeding. The rights of the partners to intervene in the examination and to contradict the actions taken by the TMP cause confusion during examinations and increase the administrative burden on the IRS.

In contrast, the centralized partnership audit regime introduces the concept of the partnership representative, which is intended to address the shortcomings of the TMP as the representative of the partnership under TEFRA. First, unlike the TMP who must be a partner, a partnership representative can be any person, including a non-partner. This allows the partnership to select the person best

situated to represent the partnership. The only limitation is that the partnership representative must have a substantial presence in the United States. This requirement is intended to ensure that the person selected to represent the partnership will be available to the IRS in the United States when the IRS seeks to communicate or meet with the representative. Like TEFRA, the centralized partnership audit regime does not prescribe whether a partnership representative may be an entity or an individual.

Second, unlike the TMP who could act for the partnership but whose actions did not bind other partners and could be contradicted by those partners, section 6223(b) provides that the partnership representative has the sole authority to bind the partnership, and all partners and the partnership are bound by the actions of the partnership representative and any final decision in a proceeding brought under subchapter C of chapter 63. The centralized partnership audit regime does not include a statutory right to notice of, or to participate in, the partnership-level proceeding for any person other than the partnership and the partnership representative.

E. Imputed Underpayment and Modification of Imputed Underpayment

Section 6225 as amended by the BBA addresses partnership adjustments made by the IRS under the centralized partnership audit regime and the determination of any resulting imputed underpayment. Section 6225(a)(1) provides that in the case of any adjustment by the Secretary in the amount of any item of income, gain, loss, deduction, or credit of the partnership, or any partner's distributive share thereof, the partnership shall pay any imputed underpayment with respect to such adjustment in the adjustment year as provided in section 6232. Any adjustment that does not result in an imputed underpayment must be taken into account by the partnership in the adjustment year. Section 6225(a)(2). Except for an adjustment to an item of credit, which is taken into account as a separately stated item, an adjustment not resulting in an imputed underpayment must be taken into account as a reduction in non-separately stated income or as an increase in non-separately stated loss (whichever is appropriate) in accordance with section 702(a)(8). Section 6225(a)(2)(A)–(B).

An imputed underpayment with respect to a partnership adjustment for the partnership's reviewed year is determined in accordance with section 6225(b). Under that section, adjustments to similar items of income, gain, loss, or deduction are netted with each other, treating any net increase or decrease in loss as a decrease or increase, respectively, in income. Section 6225(b)(1)(A)–(B). The net amount is then multiplied by the highest rate of tax in effect for the reviewed year under section 1 (individual rates) or section 11 (corporate rates). Section 6225(b)(1)(A). The product is then increased or decreased, as the case may be, by any adjustments to items of credit. Section 6225(c).

Section 6225(b)(2) provides that in the case of an adjustment that reallocates the distributive share of an item from one partner to another, such adjustment shall be taken into account when determining the imputed underpayment by disregarding any decrease in any item of income or gain and any increase in an item of deduction, loss, or credit.

Under section 6225(c), a partnership may modify an imputed underpayment under procedures established by the Secretary. Anything required to be submitted to the Secretary under the procedures for modification of the imputed underpayment must be submitted within 270 days following the date the notice of proposed partnership adjustment (NOPPA) is mailed under section 6231 by the IRS, unless that period is extended with the consent of the Secretary. Section 6225(c)(7). Any modification of the imputed underpayment amount shall be made only upon approval of the requested modification by the Secretary. Section 6225(c)(8).

Under section 6225(c)(2), modification procedures shall provide that if one or more partners files amended returns (notwithstanding section 6511) for the taxable year of the partners that includes the end of the reviewed year of the partnership, such returns take into account all adjustments made by the Secretary that are properly allocable to such partners (and for any other taxable year with respect to which a tax attribute is affected by reason of the adjustments made by the Secretary), and payment of any tax due is included with the amended returns, the imputed underpayment shall be determined without regard to the portion of the adjustments taken into account in the amended returns. In the case of any adjustment that reallocates the distributive share of any item from one partner to another, a modification described in section 6225(c)(2) shall apply only if amended returns are filed by all partners affected by such adjustment.

Under section 6225(c)(3), modification procedures shall provide for determining the imputed underpayment without regard to the portion thereof that the partnership demonstrates is allocable to a partner that would not owe tax by reason of its status as a tax-exempt entity (as defined in section 168(h)(2)).

Under section 6225(c)(4), modification procedures shall provide for taking into account a rate of tax lower than the rate of tax described in section 6225(b)(1)(A) (that is, the highest rate under section 1 or section 11) with respect to any portion of an imputed underpayment that the partnership demonstrates is allocable to a partner that is a C corporation or, in the case of a capital gain or qualified dividend, is an individual. In no event shall the lower rate determined under section 6225(c)(4) be lower than the highest rate in effect for the reviewed year with respect to the type of income and taxpayer (that is, a C corporation or an individual). For the purposes of the lower rate for capital gains and qualified dividends, an S corporation shall be treated as an individual. Section 6225(c)(4)(A). The portion of an imputed underpayment to which the lower rate applies with respect to a partner shall be determined by reference to the partner's distributive share of the items to which the imputed underpayment relates. Section 6225(c)(4)(B)(i). If an imputed underpayment is attributable to the adjustment of more than one item, and any partner's distributive share of such items is not the same with respect to all such items, the portion of the imputed underpayment to which the lower rate applies with respect to a partner shall be determined by reference to the amount which would have been the partner's distributive share of net gain or loss if the partnership had sold all of its assets at their fair market value as of the close of the reviewed year of the partnership. Section 6225(c)(4)(B)(ii).

Section 6225(c)(5) provides that, in the case of a publicly traded partnership (as defined in section 469(k)(2)), the modification procedures shall provide for determining the imputed underpayment without regard to the portion thereof that the partnership demonstrates is attributable to a net decrease in a specified passive activity loss that is allocable to a specified partner and for the partnership to take such net decrease into account as an adjustment in the adjustment year with respect to the specified partners to which such net decrease relates. Section 6225(c)(5)(A). For purposes of section 6225(c)(5), the term ''specified passive

activity loss'' means, with respect to any specified partner of such publicly traded partnership, the lesser of the passive activity loss of such partner which is separately determined with respect to such partnership under section 469(k) with respect to such partner's taxable year in which or with which the reviewed year of such partnership ends, or such passive activity loss so determined with respect to such partner's taxable year in which or with which the adjustment year of such partnership ends. Section 6225(c)(5)(B). For purposes of section 6225(c)(5), the term ''specified partner'' means any person if such person with respect to each taxable year of such person which is during the period beginning with the taxable year of such person in which or with which the reviewed year of such publicly traded partnership ends and ending with the taxable year of such person in which or with which the adjustment year of such publicly traded partnership ends is (1) a partner of such publicly traded partnership; (2) is described in section 469(a)(2); and (3) has a specified passive activity loss with respect to such publicly traded partnership. Section 6225(c)(5)(C).

Section 6225(c)(6) provides that the Secretary may by regulations or guidance provide for additional procedures to modify imputed underpayment amounts on the basis of such other factors as the Secretary determines are necessary or appropriate to carry out the purposes of section 6225(c).

F. Election for the Alternative to Payment of the Imputed Underpayment

Section 6226 provides an alternative to the general rule under section 6225(a)(1) that the partnership must pay the imputed underpayment. Under section 6226, the partnership may elect to have its reviewed year partners take into account the adjustments made by the IRS and pay any tax due as a result of those adjustments. In this case, the reviewed year partners must pay any tax resulting from taking into account the adjustments and the partnership is not required to pay the imputed underpayment.

In order to elect application of section 6226, a partnership must take two steps with respect to an imputed underpayment. First, the partnership must make an election in the manner provided by the Secretary no later than 45 days after the date the FPA is mailed by the IRS under section 6231. Section 6226(a)(1). Second, the partnership must furnish, at such time and in such manner as provided by the Secretary, a statement of each partner's share of any adjustment as determined in the FPA to its reviewed year partners. Section 6226(a)(2). If the partnership takes these two steps in the time and manner prescribed by the statute and by the Secretary, section 6225 does not apply with respect to the imputed underpayment, and each partner must take its share of the adjustments into account as provided in section 6226(b). Section 6226(a) (flush language). An election under section 6226 is revocable only with the consent of the Secretary. *Id.*

Section 6226(b) describes how the adjustments subject to the section 6226 election are taken into account by the reviewed year partners. Under section 6226(b)(1), each partner's tax imposed by chapter 1 of subtitle A of the Code (chapter 1 tax) is increased by the aggregate of the adjustment amounts as determined under section 6226(b)(2). This increase in chapter 1 tax is reported on the return for the partner's taxable year that includes the date the statement described under section 6226(a) is furnished to the partner by the partnership (reporting year).

The adjustment amounts determined under section 6226(b)(2) fall into two categories. In the case of the taxable year of the partner that includes the end of the partnership's reviewed year (first affected year), the adjustment amount is the amount by which the partner's chapter 1 tax would increase for the partner's first affected year if the partner's share of the adjustments were taken into account in that year. Section 6226(b)(2)(A). In the case of any taxable year after the first affected year, and before the reporting year (that is, the intervening years), the adjustment amount is the amount by which the partner's chapter 1 tax would increase by reason of the adjustment to tax attributes determined under section 6226(b)(3) in each of the intervening years. Section 6226(b)(2)(B). The adjustment amounts determined under section 6226(b)(2)(A) and (B) are added together to determine the aggregate of the adjustment amounts for purposes of determining the increase to the partner's chapter 1 tax in accordance with section 6226(b)(1).

Section 6226(b)(3) provides two rules regarding adjustments to tax attributes that would have been affected if the partner's share of adjustments were taken into account in the first affected year. First, in the case of an intervening year, any tax attribute must be appropriately adjusted for purposes of determining the adjustment amount for that intervening year in accordance with section 6226(b)(2)(B). Section 6226(b)(3)(A). Second, in the case of any subsequent taxable year (that is, a year, including the reporting year, that is subsequent to the intervening years referenced in 6226(b)(3)(A)), any tax attribute must be appropriately adjusted. Section 6226(b)(3)(B).

Section 6226(c) provides rules for the treatment of penalties and interest determined under section 6221 at the partnership level when an election is made under section 6226. Notwithstanding the provisions of section 6226(a) and (b) (regarding the requirements for making an election and how partners take into account adjustments), any penalties, additions to tax, or additional amounts are determined under section 6221 at the partnership level, and the reviewed year partners of the partnership are liable for any such penalty, addition to tax, or additional amount. Section 6226(c)(1).

In contrast, section 6226(c)(2) provides that interest is determined at the partner level. Section 6226(c)(2)(A). Interest is calculated from the due date of the partner's return for the taxable year to which the increase in tax is attributable taking into account any increases attributable to a change in tax attributes for an intervening year as determined under section 6226(b)(2). Section 6226(c)(2)(B). The interest is computed at the underpayment rate under section 6621(a)(2), substituting five percentage points for three percentage points for purposes of section 6621(a)(2)(B) (the sum of the federal short-term rate plus five percentage points instead of three percentage points).

G. Administrative Adjustment Requests

Section 6227 provides a mechanism for a partnership to file an administrative adjustment request (AAR) to correct errors on a partnership return for a prior year. A partnership may file a request for administrative adjustment in the amount of one or more items of income, gain, loss, deduction, or credit of the partnership for any partnership taxable year. Section 6227(a). Any adjustment requested in an AAR is taken into account for the partnership taxable year in which the AAR is made. Section 6227(b). Under section 6227, only a partnership may file an AAR. Therefore, a partner who is not also the partnership representative acting on behalf of the partnership may not file an AAR.

Under section 6227(c), a partnership has three years from the later of the filing of the partnership return or the due date of the partnership return (excluding extensions) to file an AAR for that taxable year. However, a

partnership may not file an AAR for a partnership taxable year after the IRS has mailed a notice of an administrative proceeding under section 6231 with respect to that taxable year.

Under section 6227(b), if an adjustment results in an imputed underpayment, the adjustment may be determined and taken into account in one of two ways. The partnership may determine and take the adjustment into account for the partnership taxable year in which the AAR is filed under rules similar to the rules under section 6225, relating to payment of the imputed underpayment by the partnership, except that the provisions under section 6225 pertaining to modification of the imputed underpayment based on amended returns by partners, the time for submitting information to the Secretary for purposes of modification, and approval by the Secretary of any modification do not apply. Section 6227(b)(1). Alternatively, the partnership and the partners may determine and take the adjustment into account under rules similar to the rules under section 6226 relating to the alternative to the partnership payment of the imputed underpayment, except that the additional 2 percentage points of interest imposed under section 6226 does not apply. Section 6227(b)(2).

In the case of an adjustment that would not result in an imputed underpayment, section 6227(b) requires that the partnership and the reviewed year partners must determine and take the adjustment into account under rules similar to the rules under section 6226 with appropriate adjustments. This provision ensures that the partners for the year to which the adjustments relate benefit from any refund that may result from such adjustments.

H. Definitions and Special Rules

i. Definitions

Section 6241(1) defines the term ''partnership'' for purposes of subchapter C of chapter 63 as any partnership required to file a return under section 6031(a). Section 6241(2) defines the term ''partnership adjustment'' as any adjustment in the amount of any item of income, gain, loss, deduction, or credit of a partnership, or any partner's distributive share thereof. Section 6241(3) defines the term ''return due date'' as the due date prescribed for filing the partnership return for such taxable year (determined without regard to extensions).

Section 6225(d)(1) defines the term ''reviewed year'' as the partnership taxable year to which the item being adjusted relates. Section 6225(d)(2) defines the term ''adjustment year'' to mean, in the case of an adjustment pursuant to the decision of a court in a proceeding brought under section 6234, the taxable year in which such decision becomes final; in the case of an administrative adjustment request under section 6227, the taxable year in which such administrative adjustment request is made; and, in any other case, the taxable year in which a notice of the final partnership adjustment (FPA) is mailed under section 6231.

ii. Bankruptcy

Section 6241(6)(A) provides that, in a case under Title 11 of the United States Code (Title 11 case), the running of any period of limitations provided in subchapter C of chapter 63 for making a partnership adjustment (or provided in section 6501 or 6502 for the assessment or collection of any imputed underpayment determined under subchapter C of chapter 63) is suspended for the period during which the Secretary is prohibited by reason of the Title 11 case from making the partnership adjustment or assessing or collecting any amounts due under subchapter C of chapter 63. Section 6241(6)(A)(i) provides that in the case of the period of limitations for making adjustments or making an assessment, the suspension period includes an additional 60 days. Section 6241(6)(A)(ii) provides that in the case of the period of limitations on collection, the suspension period includes an additional six months.

Section 6241(6)(A) provides that a rule similar to the rule of section 6213(f)(2) applies for purposes of section 6232(b), the limitation on assessments under subchapter C of chapter 63. Section 6213(f) clarifies that the limitation on assessment under section 6213(a) with respect to deficiencies does not prohibit the Secretary from filing of a proof of claim in a bankruptcy case. Thus, the limitation on assessment under section 6232(b) similarly does not prohibit the filing of a proof of claim in bankruptcy.

Under section 6241(6)(B), the running of the 90-day period to file a petition for readjustment under section 6234 is suspended during the period during which the partnership is prohibited by reason of a bankruptcy case from filing the petition for readjustment and for an additional 60 days.

iii. Other Rules

Section 6241(4) provides that any payments required to be made under subchapter C of chapter 63 are nondeductible under subtitle A.

Section 6241(5) provides the general rule that, for purposes of section 6234 (regarding judicial review of partnership adjustments), a principal place of business located outside the United States is treated as located in the District of Columbia.

Section 6241(7) provides that, where a partnership ceases to exist before a partnership adjustment under subchapter C of chapter 63 takes effect, the partnership adjustment shall be taken into account by the former partners of the partnership pursuant to regulations prescribed by the Secretary.

Section 6241(8) provides that, to the extent provided by regulations, the provisions of subchapter C of chapter 63 shall extend to the taxable year of an entity for which a partnership return is filed by the entity (even if it is determined that the entity is not a partnership or that there is no entity for such taxable year), to the items of such entity, and to any person holding an interest in such entity.

I. Withdrawal of Proposed Regulations Under Section 6231(c)

On February 13, 2009, a notice of proposed rulemaking (REG–138326–07) regarding the conversion of partnership items related to listed transactions was published in the **Federal Register** (74 FR 7205). The proposed regulations were issued under section 6231(c) (prior to amendment by the BBA), which permitted the IRS to issue regulations that address special enforcement areas, that is, areas where the application of the TEFRA partnership procedures would interfere with the effective and efficient enforcement of the internal revenue laws. Written or electronic comments responding to the notice of proposed rulemaking were received, but no public hearing was requested or held. After consideration of all the comments, the Treasury Department and the IRS have decided to withdraw the proposed regulations.

Explanation of Provisions

1. Scope of the Centralized Partnership Audit Regime

Proposed § 301.6221(a)–1(a) provides that all adjustments and items relating to a partnership are determined at the partnership level under the centralized partnership audit regime. Accordingly, the proposed regulations provide that the centralized partnership audit regime covers any adjustment to items of income, gain, loss, deduction, or credit of a partnership and any partner's distributive share of those adjusted items. Further, the proposed regulations provide that any chapter 1 tax resulting

from an adjustment to items under the centralized partnership audit regime is assessed and collected at the partnership level. Under the proposed regulations, the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to any such item or share is also determined at the partnership level.

Proposed § 301.6221(a)–1(b)(1) defines the phrase ''income, gain, loss, deduction, or credit'' for purposes of the centralized partnership audit regime broadly so that the phrase includes: The character, timing, source, and amount of items; the character, timing, and source of the partnership's activities; contributions to and distributions from the partnership; the partnership's basis in its assets and the value of those assets; the amount and character of partnership liabilities; the separate category (for purposes of the foreign tax credit limitation), timing, and amount of the partnership's creditable foreign tax expenditures; elections made by the partnership; items related to transactions between a partnership and any partner (including disguised sales and guaranteed payments); any items related to terminations of a partnership; and partners' capital accounts. Proposed § 301.6221(a)–1(b)(2) defines the phrase ''a partner's distributive share'' to include any partner's share of any item determined at the partnership level; the nature and amount of the partner's interest in the partnership; whether any special allocations apply to any partner; the character and timing of any item or activity required to be taken into account by the partner which is related to any item adjusted at the partnership level under subchapter C of chapter 63; and any amount required to be taken into account by the partner if the partnership makes an election under section 6226.

Proposed § 301.6221(a)–1(b)(3) defines the term ''tax'' for purposes of § 301.6221(a)–1 to mean tax imposed by chapter 1 of subtitle A of the Code. Accordingly, for purposes of assessment and collection at the partnership level, taxes imposed by other chapters of the Code are not included in the term ''tax.'' Those taxes that are not covered by the centralized partnership audit regime include taxes imposed by chapter 2 (Tax on Self-Employment Income), chapter 2A (Unearned Income Medicare Contribution), chapter 3 (Withholding of Tax on Nonresident Aliens and Foreign Corporations), chapter 4 (Taxes to Enforce Reporting on Certain Foreign Accounts), and chapter 6 (Consolidated Returns). In addition, taxes imposed by other subtitles of the Code, such as subtitle C (Employment Taxes), are not included within the scope of the centralized partnership audit regime. Accordingly, the IRS may separately examine the partnership or its partners outside the centralized partnership audit regime for purposes of determining and assessing these types of taxes.

In some circumstances, adjustments made under the centralized partnership audit regime may have an effect on the determination of taxes imposed by provisions of the Code outside of chapter 1. For example, if it is determined in a proceeding under the centralized partnership audit regime that a partnership has additional unreported ordinary income, that determination could form the basis for a separate determination that one or more of the partners in that partnership owe additional self-employment tax under chapter 2 of the Code. Additionally, as clarified in proposed § 301.6221(a)–1(d), determinations regarding items covered by the centralized partnership audit regime may be relied upon by the IRS when making determinations of taxes not covered by chapter 1 to the extent they are relevant in making such determinations. For instance, if the IRS determines as part of the centralized partnership audit regime that an individual who is treated as a partner in the partnership has received additional unreported ordinary income from the partnership, the IRS is not precluded from separately examining the partnership or that individual for purposes of determining whether that individual is an employee and not a partner of the partnership for purposes of imposing subtitle C employment taxes with regard to that income or examining the individual for purposes of determining whether the individual owes additional self-employment tax on the income. Any such determinations made in a separate examination outside the centralized partnership audit regime will be solely for purposes of the taxes not covered by chapter 1, will not constitute determinations for purposes of chapter 1, and will not constitute an administrative proceeding with respect to the partnership for purposes of subchapter C of chapter 63. The IRS may use all procedures available, such as obtaining the books and records of the partnership, to make determinations of items covered by the centralized partnership audit regime solely for purposes of taxes not covered by chapter 1. Any determinations for taxes other than chapter 1 taxes are not covered by the centralized partnership audit regime under subchapter C of chapter 63.

Proposed § 301.6221(a)–1(a) provides that the applicability of any penalty, addition to tax, or additional amount that relates to an adjustment under subchapter C of chapter 63 is determined at the partnership level. Proposed § 301.6221(a)–1(c) provides that any defenses to any penalty, addition to tax, or additional amount under subchapter C of chapter 63 may only be raised or considered in a partnership proceeding initiated under subchapter C of chapter 63. The partnership representative (as defined in section 6223 and the regulations thereunder) is the sole representative of the partnership. Accordingly, only the partnership representative may raise defenses to penalties, additions to tax, or additional amounts, including the partnership's defenses and defenses that relate to any partner. For example, if the partnership believes it has a viable reasonable cause defense, the partnership representative must raise this defense as part of the partnership proceeding. Any defense, whether it relies on facts and circumstances relating to the partnership or one or more partners or any other person, that is not raised by the partnership before a final determination under subchapter C of chapter 63 is waived and will not be considered if raised by any other person, including a partner that receives a section 6226 statement as a result of the partnership making an election under section 6226.

2. Election Out of the Centralized Partnership Audit Regime

A. Eligibility To Make the Election

Proposed § 301.6221(b)–1(b) provides that only an eligible partnership may elect out of the centralized partnership audit regime. Under that section, a partnership is an eligible partnership if it has 100 or fewer partners during the year and, if at all times during the taxable year, all partners are eligible partners, as defined in proposed § 301.6221(b)–1(b)(3).

i. 100 or Fewer Partners

Under proposed § 301.6221(b)–1(b)(2), a partnership has 100 or fewer partners during the year if it is required to furnish 100 or fewer statements under section 6031(b) during the taxable year for which the partnership makes the election. When determining whether a partnership is required to furnish 100 or fewer statements under section 6031(b) during the taxable year, only statements required to be furnished by the partnership under section 6031(b) for

the taxable year are taken into account, regardless of the number of statements actually furnished by the partnership. Accordingly, if contrary to the instructions to the Schedule K–1 the partnership furnishes more statements than are required under section 6031(b), any statements that are not required to be issued under section 6031(b) are not taken into account. For instance, if contrary to the instructions to the Schedule K–1 a partnership furnishes two Schedules K–1 to a partner (one for the partner's general interest in the partnership and one for the partner's limited interest in the partnership), the partnership is treated as furnishing only one Schedule K–1 for purposes of proposed § 301.6221(b)–1(b)(2) because the partnership is only required to furnish one statement to that partner under section 6031(b).

The proposed regulations include a special rule for partnerships that have S corporation partners. As described in proposed § 301.6221(b)–1(b)(2)(ii), any statements required to be furnished by the S corporation partner under section 6037(b) for the taxable year of the S corporation ending with or within the partnership's taxable year are taken into account for purposes of determining whether the partnership is required to furnish 100 or fewer statements for the taxable year. For instance, if an S corporation with 50 shareholders is a partner in a partnership, in addition to the statement the partnership is required to furnish to the S corporation, the 50 statements that the S corporation is required to furnish to its shareholders under section 6037(b) are taken into account for purposes of determining whether the partnership is required to issue 100 or fewer statements. As illustrated in Example 5 of proposed § 301.6221(b)–1(b)(2)(iii), the special rule under proposed § 301.6221(b)–1(b)(2)(ii) does not apply to partners that are not S corporations.

Pursuant to section 6221(b), the determination of whether the partnership has 100 or fewer partners is made by counting the number of statements required to be furnished under section 6031(b). Under TEFRA, section 6231(a)(1)(B) (prior to amendment by the BBA) specifically states that a husband and wife were treated as a single partner for purposes of determining whether the partnership had 10 or fewer partners (the TEFRA small partnership exception). Section 6221(b) contains no similar language. Accordingly, the principles of section 6031(b), which do not treat a husband and wife as a single partner, apply for purposes of determining whether the partnership has 100 or fewer partners. Examples 1 and 2 in proposed § 301.6221(b)–1(b)(2)(iii) illustrate this point.

ii. Eligible Partners

Proposed § 301.6221(b)–1(b)(3)(i) defines the term ''eligible partner'' as any person who is an individual, C corporation, eligible foreign entity, S corporation, or an estate of a deceased partner. Under this proposed rule, a C corporation is an entity defined in section 1361(a)(2), including a regulated investment company (RIC) under section 851 and a real estate investment trust (REIT) under section 856. The Treasury Department and the IRS intend to continue to treat an organization that is determined to be, or claims to be, exempt from tax under section 501(a) and is classified as a corporation under section 7701(a)(3) as a C corporation for purposes of proposed § 301.6221(b)–1(b)(3), consistent with Revenue Ruling 2003–69, 2003–1 C.B. 1118 (treating tax-exempt corporations as C corporations for purposes of the TEFRA small partnership exception). This treatment does not extend to an organization that is determined to be, or claims to be, exempt from tax under section 501(a) that is not classified as a corporation under section 7701(a)(3) as a C corporation, such as trusts.

An ''eligible foreign entity'' is defined in proposed § 301.6221(b)–1(b)(3)(iii) as any foreign entity that is classified as a per se corporation under § 301.7701–2(b)(1), (3)–(8), is classified by default as an association taxable as a corporation under § 301.7701–3(b)(2)(i)(B), or is classified as an association taxable as a corporation in accordance with an election under the provisions of § 301.7701–3(c).

Proposed § 301.6221(b)–1(b)(3)(ii) clarifies that the term ''eligible partner'' does not include partnerships, trusts, foreign entities that are not eligible foreign entities, disregarded entities, nominees, other similar persons that hold an interest on behalf of another person, and estates that are not estates of a deceased partner.

A number of comments received in response to Notice 2016–23 suggested that the Treasury Department and the IRS should exercise the regulatory authority provided in section 6221(b)(2)(C) to expand the types of entities that are eligible partners for purposes of the election out. Specifically, commenters requested that entities such as disregarded entities, trusts, partnerships, and partners who use nominees should be considered eligible partners for purposes of the election out rules. The commenters also suggest that there may be certain partnership structures that could be efficiently examined at the ultimate taxpayer level even if a partner is not one of the eligible partners listed in section 6221(b). The Treasury Department and the IRS considered these comments, but have declined in these proposed regulations to exercise the authority under section 6221(b)(2)(C) to expand the types of entities that are eligible partners for purposes of the election out rules or to create separate election out provisions for specific partnership structures. When a partnership elects out of the centralized partnership audit regime, the IRS must examine and assess tax with respect to each ultimate partner under the deficiency procedures under subchapter B of chapter 63. Enactment of TEFRA was a reaction to the complexity and burden of these deficiency procedures with respect to partnerships. The increasing number and complexity of partnerships since TEFRA was enacted revealed that the TEFRA procedures were inadequate for the IRS to effectively audit partnerships. The centralized partnership audit regime is intended to enhance the IRS's ability to examine partnerships, particularly large and highly tiered partnerships. If the proposed regulations broaden the scope of the election out provisions to include additional types of partners or partnership structures, the IRS will face additional administrative burden in examining those structures and partners under the deficiency rules. Comments on any potential expansion of the election out rules are particularly helpful if they address the additional burdens any such expansion would impose on the IRS and not just the decreased burden on taxpayers resulting from the suggested change.

B. Making the Election Out

Proposed § 301.6221(b)–1(c) provides the time, form, and manner for the partnership to make an election out of the centralized partnership audit regime, and unless all of these requirements are satisfied an election will not be valid. The requirements under proposed § 301.6221(b)–1(c) are described below.

First, under proposed § 301.6221(b)–1(c)(1), a partnership may make the election only on a timely filed partnership return (including extensions) (that is, Form 1065, *U.S. Return of Partnership Income*) for the partnership taxable year to which the election relates. Therefore, a partnership may not make the election on a return that is filed after the due date (including extensions) for the taxable year. An election out made by a partnership may

only be revoked with the consent of the IRS. Proposed § 301.6221(b)–1(c)(1).

In response to Notice 2016–23, some commenters requested that the election out rules should not penalize a partnership that does not timely file a return. Section 6221(b) specifically prescribes that the election must be made on a timely filed return. Accordingly, the proposed regulations conform with the statute and require the election under section 6221(b) to be made on a timely filed return.

Second, proposed § 301.6221(b)–1(c)(2) provides that a partnership must disclose to the IRS the names, correct TINs, and federal tax classifications of all partners of the partnership and, if there is an S corporation partner, the names, correct TINs, and federal tax classifications of all persons to whom an S corporation partner is required to furnish statements during the S corporation partner's taxable year ending with or within the partnership's taxable year at issue, and any other information regarding those partners (and shareholders) as required by the IRS in forms and instructions. The Treasury Department and the IRS recognize that section 6221(b)(2)(B) grants authority to the Secretary to provide for alternative identification of any foreign partners. However, in most cases, partners (including foreign partners) in partnerships that file a Form 1065, *U.S. Return of Partnership Income,* are required to have taxpayer identification numbers, and, as a result, alternative identification procedures for foreign partners may be unnecessary. The Treasury Department and the IRS request comments describing situations in which a foreign partner in a partnership subject to the centralized partnership audit regime may not otherwise be required to have a taxpayer identification number except for purposes of making an election out under section 6221(b), as well as recommendations for alternative identification procedures that could be used in such cases.

Finally, proposed § 301.6221(b)–1(c)(3) provides that a partnership that elects out of the centralized partnership audit regime must notify each of its partners that the partnership made the election. This notification must be made within 30 days of making the election. The proposed regulations do not mandate the form of the notice that the partnership must provide to its partners. Accordingly, the notice may be in writing, electronic, or other form chosen by the partnership.

Proposed § 301.6221(b)–1(d) clarifies that any election out of the centralized partnership audit regime by an eligible partnership that is a partnership-partner (as defined in proposed § 301.6241–1(a)(7)) has no effect on the application of the centralized partnership audit regime to that partnership-partner in its capacity as a partner in another partnership. The Treasury Department and the IRS intend this provision to make clear that the effect of adjustments on a partnership-partner that is a partner in a partnership that is subject to the centralized partnership audit regime are determined under the centralized partnership audit regime even if that partnership-partner has made a valid election under section 6221(b). The examples in proposed § 301.6221(b)–1(d)(2) illustrate these principles.

Proposed § 301.6221(b)–1(e) provides that, if a partnership makes an election under this section, the IRS may rely on that election for all purposes unless and until the IRS determines that the election is invalid. The Treasury Department and the IRS intend proposed § 301.6221–1(e) to provide certainty to partnerships and the IRS because whether an election out is valid will determine whether the IRS must conduct a proceeding with respect to the partnership under the centralized partnership audit regime or whether the IRS will follow deficiency procedures with respect to the direct or indirect partners of the partnership to examine items that, absent a valid election, would be subject to the centralized partnership audit regime. Proposed § 301.6221–1(e) provides that an election that is not fully compliant with all the applicable rules, including an election by a partnership not eligible to make the election, may still be relied upon by the partnership unless challenged by the IRS, and the IRS may also rely upon an election in determining whether a partnership is subject to the centralized partnership audit regime. As a result, it will be clear to partnerships, direct and indirect partners, and the IRS which examination and adjustment regime should apply to the items otherwise subject to the centralized partnership audit regime.

C. Effect of Election Out

As discussed in the Background, the centralized partnership audit regime is designed to make it easier for the IRS to examine partnerships and collect any resulting underpayments through one centralized proceeding. For partnerships that elect out, the IRS will be required to open deficiency proceedings at the partner level to adjust items associated with the partnership, resolve issues, and assess and collect any tax that may result from the adjustments. Each partner-level deficiency proceeding is subject to its own statute of limitations and venue, which often results in separate partner-by-partner determinations with respect to the same item. Nevertheless, the IRS intends to increase the number of partnership audits for both partnerships that are subject to the centralized partnership audit regime and partnerships that have elected out of the partnership audit regime.

In addition, to ensure that the election out rules are not used solely to frustrate IRS compliance efforts, the IRS intends to carefully review a partnership's decision to elect out of the centralized partnership audit regime. This review will include analyzing whether the partnership has correctly identified all of its partners for federal income tax purposes notwithstanding who the partnership reports as its partners. For instance, the IRS will be reviewing the partnership's partners to confirm that the partners are not nominees or agents for the beneficial owner.

In addition, the IRS intends to carefully scrutinize whether two or more partnerships that have elected out should be recast under existing judicial doctrines and general federal tax principles as having formed one or more constructive or de facto partnerships for federal income tax purposes. The types of arrangements that the IRS will carefully review include those where the profits or losses of partners are determined in whole or in part by the profits or losses of partners in another partnership, and those that purport to be something other than a partnership, such as the co-ownership of property. If it is determined that two or more partnerships that have elected out of the centralized partnership audit regime have formed a constructive or de facto partnership for a particular partnership taxable year and are recast as such by the IRS, that constructive or de facto partnership will be subject to the centralized partnership audit regime because that constructive or de facto partnership will not have filed a partnership return and, therefore, will not have made a timely election out as required under section 6221(b)(1)(D)(i) and these proposed regulations. The constructive or de facto partnership may also have more than 100 partners or an ineligible partner, making it ineligible to elect out.

3. Partner's Return Must Be Consistent With Partnership Return

A. Requirement of Consistency

Proposed § 301.6222–1(a)(1) provides that a partner's treatment of each item of income, gain, loss, deduction, or credit attributable to a partnership must be consistent with the treatment of those items on the partnership return, including treatment with respect to the amount, timing, and characterization of those items. Additionally, proposed § 301.6222–1(a)(1) clarifies that the determination of whether a partner treats an item consistently with the partnership return is determined with reference to the treatment of that item on the partnership return filed with the IRS, and not with reference to any schedule or other information provided or furnished by the partnership to the partner, for example, a schedule K–1 furnished to the partner by the partnership, unless the election under proposed § 301.6222–1(d), regarding incorrect statements or information, applies.

Proposed § 301.6222–1(a)(2) provides that a partnership-partner is subject to section 6222 and the regulations thereunder regardless of whether the partnership-partner has made an election out of the centralized partnership audit regime under section 6221(b). Proposed § 301.6222–1(a)(3) provides that a partner's return is considered automatically inconsistent if the partnership does not file a return, unless the partner notifies the IRS of this inconsistency in accordance with proposed § 301.6222–1(c).

For purposes of these proposed regulations, the term ''treatment of items on a partnership return'' is defined under proposed § 301.6222–1(a)(4) to take into account treatment of all items reported by the partnership, regardless of the form that the reporting of the partnership return position with respect to that item takes (that is, regardless of whether the return position with respect to an item is reflected on an original return or reflected on a statement issued as a result of a partnership-initiated adjustment or an IRS-initiated adjustment). Accordingly, the term treatment of items on a partnership return includes not only the treatment of an item on the partnership's return filed with the IRS under section 6031(a), but also includes any amendment or supplement to such return, such as an administrative adjustment request filed under section 6227 and the regulations thereunder, as well as the treatment of an item on any statement, schedule or list, and any amendment or supplement thereto, filed by the partnership with the IRS, including statements filed pursuant to section 6226. Proposed § 301.6222–1(a)(5) provides examples illustrating the rules requiring consistent reporting by partners.

B. Mathematical or Clerical Error Adjustments

Section 6222(b) provides that when a partner fails to treat items attributable to a partnership consistently with the treatment of those items on the partnership return, the IRS may assess and collect any underpayment of tax that results from that inconsistency as if it were on account of a mathematical or clerical error appearing on the partner's return; however the ability to request an abatement of the assessment under section 6213(b)(2) does not apply. Section 6213(b) provides the general rules for assessments of amounts of tax arising out of mathematical or clerical errors. In general, section 6213(b)(1), permits the IRS to immediately assess and collect tax that arises on account of a mathematical or clerical error appearing on a taxpayer's return, notwithstanding the general restrictions on assessment and collection of deficiencies under section 6213(a). Section 6213(b)(2) gives the taxpayer 60 days to request an abatement of that assessment.

Section 6222(b) specifically states that the IRS may assess an underpayment of tax as if it were on account of a mathematical or clerical error on the partner's return. Section 6222(b), however, does not define the term underpayment for these purposes, and the term underpayment is not defined elsewhere under subchapter C of chapter 63. The term underpayment is defined in section 6664(a); however, that definition is expressly limited to part I of subchapter A of chapter 68 of the Code. Section 6213(b)(1), which discusses assessments arising out of mathematical or clerical errors, refers to the amount of tax due in excess of that shown on the return on account of the error. Because section 6222(b) refers explicitly to mathematical or clerical error and other provisions under 6213(b), proposed § 301.6222–1(a) provides that the underpayment of tax described under 6222(b) is the amount of tax due that results from adjusting the item on the partner's return to make the treatment of the item consistent with the treatment of such item on the partnership return.

Accordingly, proposed § 301.6222–1(b) provides that the IRS may assess and collect any underpayment of tax that results from adjusting a partner's inconsistently reported item to conform that item with the treatment on the partnership return as if the resulting underpayment of tax were on account of a mathematical or clerical error appearing on the partner's return. A partner may not request an abatement of that assessment. See proposed § 301.6222–1(b)(2).

In instances where the partner is itself a partnership, section 6232(d)(1)(B) provides for the use of rules similar to the rules of section 6213(b). Accordingly, proposed § 301.6222–1(b) states that if the partner is itself a partnership, any adjustment on account of such partnership's failure to treat an item consistently will be treated as an adjustment on account of a mathematical or clerical error. Also, in accordance with section 6232(d)(2), proposed § 301.6222–1(b) states that the procedures under section 6213(b)(2) for requesting abatements do not apply.

C. Notice of Inconsistency

Proposed § 301.6222–1(c) states that the provisions of proposed § 301.6222–1(a) (consistent reporting requirement) and proposed § 301.6222–1(b) (math error treatment) do not apply to items that the partner properly identifies as being treated inconsistently with the partnership return. In order to properly identify an item, the proposed regulations provide that the partner must attach a statement identifying the inconsistency to the partner's return on which the item is treated inconsistently. Proposed § 301.6222–1(c)(1).

Proposed § 301.6222–1(c)(2) coordinates the rules regarding notice of inconsistent treatment under proposed § 301.6222–1(c)(1) with situations where a partner is bound to the treatment of an item under section 6223 as result of actions taken by the partnership under subchapter C of chapter 63 or by any final decision in a proceeding brought under subchapter C of chapter 63 with respect to the partnership. For instance, as noted in the proposed regulations under section 6226, the election under section 6226 and the filing and furnishing of statements under that section are actions of the partnership under section 6223. See proposed § 301.6226–1(d). Because the partner is bound by the treatment of an item reflected in a statement filed by the partnership under section 6226, the partner is precluded from treating that item inconsistently under section 6222. The fact that the partner files a notice of inconsistent treatment does not change the fact that the partner is bound by the treatment of the items in the section 6226 statement. Any other result would undermine the purpose of section 6223, which provides certainty and finality with respect to actions

taken by the partnership during the centralized partnership audit regime. Accordingly proposed § 301.6222–1(c)(2) provides that if a partner's treatment of the item is not consistent with the treatment to which the partner is bound under section 6223 with respect to such item, such as the partnership treatment of items in an administrative adjustment request or in a section 6226 statement, the provisions of proposed § 301.6222–1(a) (consistent reporting requirement) and proposed § 301.6222–1(b) (math error treatment) apply to that item, and any underpayment of tax resulting from the failure to treat the item consistently with the treatment to which the partner is bound may be assessed and collected in the same manner as if such underpayment were on account of a mathematical or clerical error.

Situations may arise in which a partner treats several items inconsistently from how the partnership treated those same items, but the partner notifies the IRS only of some, but not all, of the inconsistencies. Proposed § 301.6222–1(c)(3) clarifies that the exception to the consistent reporting requirement and math error treatment applies only to the inconsistent positions that are specifically identified to the IRS in a proper notification.

Under section 6223(b), a final decision in an administrative or judicial proceeding with respect to a partnership under the centralized partnership audit regime is binding on the partnership and all partners of the partnership. In contrast, under section 6222(d), a final determination in an administrative or judicial proceeding with respect to a partner's identified inconsistent position is not binding on the partnership if the partnership is not a party to the proceeding. Accordingly, section 6222(d) provides that the IRS may conduct a proceeding with respect to the partner, that is, a proceeding that does not involve the partnership, where the partner notified the IRS of an inconsistent position under 6222(c). Section 6222(d) does not, however, preclude the IRS from conducting a proceeding with respect to the partnership.

In some cases, the IRS may determine that conducting a partnership proceeding under the centralized partnership audit regime under subchapter C of chapter 63 is appropriate, for instance when the IRS disagrees with both the partner's and the partnership's treatment of the item or when multiple partners treat an item inconsistently from the treatment by the partnership. In other cases, the IRS may determine that a partner proceeding, which generally would be under deficiency procedures in subchapter B of chapter 63, is appropriate, for instance when the IRS determines that the partner's inconsistent treatment is incorrect. Accordingly, proposed § 301.6222–1(c)(4)(i) clarifies that in the case of an identified inconsistency, the IRS may conduct both a proceeding with respect to the partner (a proceeding in which the partnership would not be involved) and a proceeding with respect to the partnership. Proposed § 301.6222–1(c)(4)(ii) provides that any final decision with respect to an inconsistent position identified in a notice to the IRS under section 6222(c) in a proceeding to which the partnership is not a party is not binding on the partnership.

Proposed § 301.6222–1(c)(4)(ii) also provides that if the IRS conducts a separate proceeding with respect to a partner, the IRS is not required to conform items on the partner's return to make those items consistent with the treatment of the items on the partnership return. Rather, if the IRS disagrees with the partner's treatment of an inconsistent item, the IRS may adjust the item to conform to the proper treatment of such item under federal tax law. Proposed § 301.6222–1(c)(5) provides examples illustrating the provisions under proposed § 301.6222–1(c).

Proposed § 301.6222–1(d) provides that a partner has provided notice to the IRS of an inconsistency if the partner treats an item consistently with incorrect information that the partnership furnished to the partner and makes an election to allow such treatment. The proposed regulations provide that the partner makes the election after being notified by the IRS of an adjustment due to treatment of an item on the partner's return inconsistent with the treatment of that item on the partnership's return. As part of the election, the proposed regulations require the partner to demonstrate that the treatment of the item on the partner's return is consistent with the treatment of that item on the incorrect schedule or information furnished to the partner by the partnership. Proposed § 301.6222–1(d)(2) provides that this election must be made within 60 days from the date of the notice informing the partner of the inconsistent treatment. The election must be clearly identified as an election under section 6222(c)(2)(B), signed by the partner making the election, and must be accompanied by copies of the schedule or other information furnished to the partner by the partnership as well as the notice mailed by the IRS informing the partner of the conforming adjustment. If it is not clear that the partner's treatment of the item on the partner's return is consistent with the information provided by the partnership, the election must include an explanation of how the partner's treatment is consistent. Proposed § 301.6222–1(d)(3) provides examples illustrating the provisions under proposed § 301.6222–1(d).

One comment in response to Notice 2016–23 suggested that when a partner notifies the IRS of an inconsistency, the notification of inconsistent treatment should be included with the partner's return for the tax year in which the partner took the inconsistent position, rather than create a separate notification process. The Treasury Department and the IRS agree with this comment. Accordingly, the proposed regulations require a partner to attach a notification of inconsistent treatment to the partner's return on which the item is treated inconsistently. A separate notification process is necessary, however, when a partner receives an incorrect statement, schedule, or other information from the partnership because the partner generally will not know about the inconsistency.

4. Partnership Representative

Proposed § 301.6223–1 provides rules requiring a partnership to designate a partnership representative (proposed § 301.6223–1(a)), rules describing the eligibility requirements for a partnership representative (proposed § 301.6223–1(b)), rules describing designation of the partnership representative (proposed § 301.6223–1(c)–(f)), and rules describing the termination of a designation of a partnership representative (proposed § 301.6223–1(d)–(f)).

A. Eligibility To Serve as the Partnership Representative

Proposed § 301.6223–1(b)(1) provides that a partnership may designate any person as defined in section 7701(a)(1), including an entity, that meets the requirements of proposed § 301.6223–1(b)(2), (b)(3), and (b)(4), to be the partnership representative. The partnership representative must have a substantial presence in the United States and must have the capacity to act. If an entity is designated as the partnership representative, the partnership must identify and appoint an individual to act on the entity's behalf. The appointed individual must also have a substantial presence in the United States and the capacity to act. Accordingly, provided the person is otherwise eligible, the partnership may

appoint a partner or a non-partner, including the partnership's management company, as the partnership representative.

Proposed § 301.6223–1(b)(2) provides that the partnership representative must have a substantial presence in the United States. Proposed § 301.6223–1(b)(2)(i) provides that a person has a substantial presence in the United States for the purposes of section 6223 if three criteria are met. First, the person must be able to meet in person with the IRS in the United States at a reasonable time and place as is necessary and appropriate as determined by the IRS. Second, the partnership representative must have a street address in the United States and a telephone number with a United States area code where the partnership representative can be reached by United States mail and telephone during normal business hours in the United States. Third, the partnership representative must have a U.S. TIN.

The proposed regulations do not use the substantial presence test as described in section 7701(b)(3) (substantial presence test) because the purpose of the substantial presence test is to determine whether an alien individual should be treated as a resident alien for U.S. tax purposes. In contrast, the purpose of requiring that the partnership representative have a substantial presence in the United States is to ensure ease of communication so the audit process can proceed smoothly. As a result, proposed § 301.6223–1(b)(2) does not adopt the substantial presence test in section 7701(b)(3).

Communication between the IRS and the partnership representative is fundamental to an efficient administrative proceeding, both for the IRS and the partnership. As a result, if the partnership designates an entity as the partnership representative (an entity partnership representative), proposed § 301.6223–1(b)(3) requires the partnership to appoint an individual (designated individual) as the sole individual to act on behalf of the entity partnership representative. Like the partnership representative itself, the designated individual must meet the substantial presence requirements of proposed § 301.6223–1(b)(2). If the partnership does not appoint a designated individual, the IRS may determine the partnership representative designation is not in effect. See proposed § 301.6223–1(f).

In addition, a person must have the capacity to act as the partnership representative or the designated individual. Proposed § 301.6223–1(b)(4) describes specific events that cause a person to lose the capacity to act and includes a catch-all provision for unforeseen circumstances in which the IRS reasonably determines that the partnership representative or designated individual may no longer have the capacity to act.

The proposed regulations provide that a person designated by the partnership as the partnership representative is deemed to satisfy the substantial presence requirements and have capacity to act unless and until the IRS determines the person is ineligible. See proposed § 301.6223–1(b)(1). If a partnership representative never met, or no longer meets, the requirements of proposed § 301.6223–1(b), the designation of the partnership representative is valid and remains in effect until the partnership, the partnership representative, or the IRS takes an affirmative action to terminate that designation. This can happen in one of three ways. The partnership representative may resign pursuant to proposed § 301.6223–1(d), the partnership may revoke the designation pursuant to proposed § 301.6223–1(e), or the IRS may determine a designation is not in effect under proposed § 301.6223–1(f). Until one of those events occurs, the designation is valid and remains in effect. For the validity of actions taken by the partnership representative during the period when the designation was in effect, see proposed § 301.6223–2(b).

B. Designating the Partnership Representative

Proposed § 301.6223–1(c) describes the manner in which a partnership designates the partnership representative. A partnership must designate the partnership representative on the partnership's return filed for the partnership taxable year. A partnership must designate a partnership representative separately for each taxable year. A designation for one taxable year is not effective for any other taxable year. A designation for a partnership taxable year remains in effect until the designation is terminated under proposed § 301.6223–1(d) (resignation), proposed § 301.6223–1(e) (revocation), or proposed § 301.6223–1(f) (determination that the designation is not in effect).

Under the TEFRA partnership procedures, a TMP may be designated, including through a resignation or revocation, at any time after the filing of the initial partnership return by submitting a new designation to the IRS. The IRS processes each of these subsequent designations regardless of whether the partnership is examined, creating unnecessary work for the IRS because very often the TMP is not required to take any action on behalf of the partnership or the partners.

The partnership representative rules are intended to be an improvement over the TMP rules. As a result, the partnership representative rules have been crafted to avoid the resource drain created by processing unnecessary resignations, revocations, and subsequent designations of TMPs. Accordingly, the proposed regulations provide that a partnership representative designation may not be changed (either by resignation or revocation) until the IRS issues a notice of administrative proceeding to the partnership, except when the partnership files a valid administrative adjustment request (AAR) in accordance with section 6227 and proposed § 301.6227–1.

The proposed regulations provide that the partnership or the partnership representative may change the initial designation of the partnership representative simultaneously with filing an AAR, but the form used for filing an AAR may not be used solely for the purpose of changing the partnership representative. The Treasury Department and the IRS understand that there may be other circumstances that warrant allowing a partnership or partnership representative to change the partnership representative designation and request comments regarding such other circumstances.

Specifically, proposed § 301.6223–1(d) allows a partnership representative to resign by notifying the partnership and the IRS in writing. The partnership representative may not resign prior to the issuance of a notice of administrative proceeding (except in conjunction with the filing of an AAR), but the partnership representative may resign at any time after the issuance of the notice of an administrative proceeding. The partnership representative may resign regardless of whether that person was designated by the partnership or the IRS. The resigning partnership representative may, but is not required to, designate a successor partnership representative. If the resigning partnership representative does not designate a successor, the IRS will determine that the designation is not in effect under proposed § 301.6223–1(f) and provide the partnership with an opportunity to designate a new partnership representative. If the partnership fails to designate a new partnership representative, the IRS will designate a new partnership representative

pursuant to proposed § 301.6223–1(f)(5). A resignation is effective 30 days after the date the notice of resignation is sent to the IRS. See proposed § 301.6223–1(d)(1). Similar rules apply to designated individuals, allowing the designated individual to resign and appoint a successor. See proposed § 301.6223–1(d)(3).

Proposed § 301.6223–1(e) describes the rules which allow the partnership to revoke the partnership representative designation and designate a successor. This revocation provision is an exception to the general rule that the partnership representative has the sole authority to act on behalf of the partnership. In general, a change in the partnership representative or designated individual should only occur when the partnership representative resigns and appoints a successor under proposed § 301.6223–1(d). However, there may be circumstances where the partnership would like to change the designation, and the partnership representative or designated individual will not resign. Proposed § 301.6223–1(e) provides flexibility to the partnership in these circumstances, allowing the partnership, through its partners, to revoke a prior designation.

In the case of a revocation, the partnership must notify the IRS in writing and must also notify the partnership representative whose designation is being revoked of the revocation. Like resignations under proposed § 301.6223–1(d), the partnership may not revoke the partnership representative designation prior to the issuance of a notice of an administrative proceeding except in conjunction with the filing of a valid AAR. A revocation is effective 30 days after the date the notice of revocation is sent to the IRS. See proposed § 301.6223–1(e)(1). Upon the receipt of a valid revocation, the IRS will notify the partnership and any partnership representative whose designation is being revoked of the acceptance of the revocation.

Proposed § 301.6223–1(e)(3) provides the rules for who may sign a revocation. In general, the partnership representative is the sole representative of the partnership. The revocation provision provides a limited exception to this rule and allows, solely for purposes of revocation, other partners to act on behalf of the partnership. Under the proposed regulations, a general partner as shown on the partnership return at the close of the taxable year for which the partnership representative was designated must sign the revocation. If no general partner has the capacity to act on behalf of the partnership (as described in proposed § 301.6223–1(b)(4)(i)–(v)), proposed § 301.6223–1(e)(3)(i) provides that any reviewed year partner in the partnership may sign the revocation. Proposed § 301.6223–1(e)(3)(ii) provides definitions with respect to limited liability companies (LLCs) and rules for which members of an LLC may sign a revocation. For purposes of which partners may sign a revocation, member-managers are treated as general partners, and other members are treated as a partner other than a general partner. If there is no member-manager, the proposed regulations provide that each member is treated as a member-manager for purposes of this section.

Additionally, proposed § 301.6223–1(e) provides that any revocation must include a statement signed under penalties of perjury that the partner signing the revocation is authorized by the partnership to revoke the designation and has provided a copy of the revocation to the partnership and partnership representative.

The combination of requiring the partner making the revocation to attest under penalties of perjury that the partner is authorized to act for the partnership and requiring the partner to notify the partnership and partnership representative helps ensure that any partnership representative revocation is consistent with the wishes of the partnership. The notification that the revocation has been accepted that the partnership and the partnership representative receive from the IRS provides further notice to the partnership and allows for the partnership to take action against unauthorized revocations and designations.

There may be circumstances in which more than one general partner in the partnership makes a revocation within a short period of time. In that circumstance, the IRS may not be able to readily determine the identity of the proper partnership representative. To allow the IRS to identify the correct partnership representative, proposed § 301.6223–1(e)(5) provides if the IRS receives multiple revocations or subsequent designations within a 90-day period, the IRS may determine that a designation is not in effect due to multiple revocations and follow the procedures under proposed § 301.6223–1(f) to designate a new partnership representative. These rules do not require that the IRS designate a person designated in any of the revocations received. If the IRS designates a partnership representative under proposed § 301.6223–1(f), proposed § 301.6223–1(e)(4) provides that the partnership must receive the IRS's permission to later revoke the designation.

C. Determination That a Designation Is Not in Effect

Proposed § 301.6223–1(f) provides the rules regarding how the IRS makes a determination that a designation of a partnership representative is not in effect, as well as how the IRS will designate a partnership representative if a designation is not in effect.

Proposed § 301.6223–1(f) provides that when the IRS determines a designation is not in effect, the IRS will notify the partnership and the last partnership representative, if there was one, of the IRS's determination. The designation is terminated as of the day the IRS notifies the partnership that no designation is in effect. Proposed § 301.6223–1(f)(4) provides that except in cases where the partnership designation is not in effect because there were multiple revocations, the partnership will have 30 days to designate a successor partnership representative before the IRS will designate a new partnership representative. If the IRS has already received multiple revocations from different partners and determined it is unable to ascertain which partnership representative the partnership wants to designate, proposed § 301.6223–1(f)(4) provides that the IRS will notify the partnership that the designation is not in effect and designate a new partnership representative pursuant to proposed § 301.6223–1(f)(5) without providing the partnership with an opportunity to designate a partnership representative. This rule avoids creating further confusion between the partnership and the IRS, which would delay the designation and the administrative proceeding.

D. Designation of the Partnership Representative by the IRS

Proposed § 301.6223–1(f)(1) provides that if there is no designation of a partnership representative in effect, the IRS may select any person to serve as partnership representative. There is no distinction between the authority of a partnership representative designated by the partnership and one selected by the IRS. For that reason, the proposed regulations refer to the IRS's *selection* of a partnership representative as a *designation.*

Under proposed § 301.6223–1(f)(5), the IRS will notify the partnership of its designation by providing the partnership with the name, address, and telephone number of the new partnership representative. Under

proposed § 301.6223–1(f)(5) the designation by the IRS of a new partnership representative is effective on the day the IRS mails the notification to the partnership of the designation. Proposed § 301.6223–1(f)(5) also requires the IRS to mail a copy of the notification to the new partnership representative.

Proposed § 301.6223–1(f)(5)(ii) provides that the IRS may designate any person as the partnership representative. In designating a person as the partnership representative, the IRS will consider whether the person is a partner in the partnership, either in the reviewed year or at the time the designation is made. In addition, the IRS may consider the other remaining factors listed in proposed § 301.6223–1(f)(5)(ii).

Once the IRS has designated a partnership representative, the partnership may not revoke that designation without the consent of the IRS. See proposed § 301.6223–1(f)(3)(iii). The examples under proposed § 301.6223–1(f)(6) illustrate the operation of the rules described above.

E. Authority of the Partnership Representative

Proposed § 301.6223–2 describes the binding nature of actions taken by the partnership representative on behalf of the partnership under subchapter C of chapter 63 and of the partnership with respect to its partners. Under proposed § 301.6223–2, the partnership and all partners are bound by the actions of the partnership and the partnership representative and by any final decision in a proceeding brought under subchapter C of chapter 63. The partnership representative binds the partnership and its partners by the partnership representative's actions, including: Agreeing to settlements, agreeing to a notice of final partnership adjustment, making an election under section 6226, and agreeing to an extension of the period for adjustments under section 6235. In addition, all persons whose tax liability is determined, in whole or in part, by taking into account, directly or indirectly (such as indirect partners), adjustments to any item within the scope of the centralized partnership audit regime under section 6221(a), by the IRS in a notice of final partnership adjustment in a proceeding brought under subchapter C of chapter 63, or in a final decision of a court under subchapter C of chapter 63 are similarly bound. This binding authority extends to all partners, including those partners who have elected out of the centralized partnership audit regime under section 6221(b).

Proposed § 301.6223–2(c)(1) provides that the partnership representative has the sole authority to act on behalf of the partnership in any examination or other proceeding under subchapter C of chapter 63. Similarly, proposed § 301.6223–2(c)(2)(ii) provides that a designated individual has the sole authority to act on behalf of the partnership representative and the partnership. Except for a partner that is also the partnership representative or a designated individual, proposed § 301.6223–2(c)(1) provides that partners may not participate in or contest the results of an examination or other proceeding involving a partnership without permission of the IRS. Proposed § 301.6223–2(c)(1) also provides that no other person, regardless of whether that person's tax liability is affected by the actions of the partnership, may participate in the partnership proceeding under subchapter C of chapter 63.

Proposed § 301.6223–2(c)(1) states that the broad authority of the partnership representative may not be limited by state law, partnership agreement, or any other document or agreement. Any action taken by the partnership representative with respect to the centralized partnership audit regime under the Code and federal tax regulations is valid and binding on the partnership for purposes of tax law regardless of any other provision of state law, partnership agreement, or any other document or agreement.

Proposed § 301.6223–2(c)(2)(i) provides that the partnership representative, by virtue of being designated, has the authority to bind the partnership for purposes of the centralized partnership audit regime. Similarly, under proposed § 301.6223–2(c)(2)(ii), the designated individual's authority to bind the partnership representative and the partnership is derived by virtue of the appointment of that designated individual.

The examples under proposed § 301.6223–2(d) illustrate the operation of the rules described above.

F. Notice 2016–23 Comments Regarding the Partnership Representative

A number of comments made specific suggestions about whom the IRS should designate as the partnership representative when no partnership representative designation is in effect. The suggestions ranged from designating the partner with the largest profits interest or the greatest percentage ownership interest to designating any partner that can sign the partnership return. Commenters suggested that partners with small investments, nominal profits interests, or other minor roles in the partnership would not be suitable to adequately represent the partnership during an administrative proceeding. The proposed regulations, however, establish rules to provide more flexibility for the IRS to designate a partnership representative to avoid some of the shortcomings of TEFRA, including the complexity and difficulty of locating a qualified TMP.

Accordingly, the proposed regulations allow the IRS to designate any person after first considering partners from the reviewed year or at the time the designation is made, but it also provides several factors that the IRS may consider in determining whom to select. This rule balances the needs of the government and the partnership.

Other suggestions included requiring that the IRS select a partnership representative that has authority to bind the partnership under state law. The proposed regulations do not limit whom the IRS may designate based on state law. The sole authority to bind the partnership for all purposes is derived from the Code and applies for purposes of the internal revenue laws. Therefore, proposed regulations are drafted so that federal, rather than state law, controls with respect to the rules regarding the partnership representative for purposes of the centralized partnership audit regime.

Some commenters requested that there be no restrictions on whom the partnership can designate as the partnership representative other than the requirement of substantial presence in the United States. These suggestions included allowing entities, even entities with no employees, to be appointed as the partnership representative. The proposed regulations adopt these suggestions by allowing the partnership to designate any person, including an entity, to be the partnership representative provided, in the case of an entity designated as partnership representative, the partnership also identify a designated individual to act on behalf of the entity partnership representative. The proposed regulations require that both an entity partnership representative and the designated individual have substantial presence in the United States. Provided an entity with no employees otherwise meets the requirements of proposed § 301.6223–1, the proposed regulations would allow that entity to be the partnership representative.

Some commenters suggested that the proposed rules require the partnership representative to provide notice to all

partners of significant developments in an administrative proceeding and to allow partners other than the partnership representative to participate in the administrative proceeding. The proposed regulations do not adopt these suggestions. The centralized partnership audit statutory regime does not include any notice requirements, which relieves both the IRS and the TMP of the cumbersome TEFRA notice requirements. Whether and how the partnership representative communicates with the partners in the partnership is best left to the partnership to determine. Likewise, it is more efficient for the IRS to interact solely with the partnership representative during an administrative proceeding.

5. Imputed Underpayment and Modification of Imputed Underpayment

A. General Rules Regarding the Imputed Underpayment

Proposed § 301.6225–1(a) provides the general rule that if a partnership adjustment results in an imputed underpayment, the partnership must pay the imputed underpayment in the adjustment year. As described in proposed § 301.6225–1(a)(3), the partnership adjustments and any imputed underpayment resulting from such adjustments are set forth in a NOPPA mailed to the partnership and partnership representative. The partnership may request modification with respect to an imputed underpayment set forth in the NOPPA under the procedures described in proposed § 301.6225–2.

The IRS and taxpayers both have an interest in resolving the issues raised by the IRS under the centralized partnership audit regime in the most efficient manner. An administrative proceeding under the centralized partnership audit regime is conducted under the same principles applicable to examinations generally. For instance, after providing the partnership and partnership representative with a notice of administrative proceeding, consistent with IRS general examination procedures, the IRS will endeavor to work with the partnership representative to set a schedule for information document requests (IDRs) and partnership responses to the IDRs. In general, the IRS informs the partnership representative about potential items and transactions that raise issues and provides information about adjustments that will be included in the NOPPA.

As part of this process, the IRS may agree to review certain information prior to the issuance of the NOPPA in an effort to resolve issues in an expedited fashion and eliminate the need to make certain adjustments. In addition, the modification process may move faster if relevant information is provided to the IRS employees conducting the administrative proceeding prior to issuance of the NOPPA. However, once the NOPPA is issued, the modification procedures under proposed § 301.6225–2 are the partnership's only formal route to request changes to an imputed underpayment set forth in the NOPPA.

Proposed § 301.6225–1(a)(2) provides that unless the IRS determines otherwise, all applicable preferences, restrictions, limitations, and conventions will be taken into account as if the adjusted item was originally taken into account by the partnership or the partners in the manner most beneficial to the partnership or partners. Therefore, the IRS calculates an imputed underpayment by taking into account the applicable internal revenue laws, including provisions that may limit or restrict the ability of a partner to reduce income or take advantage of tax benefits flowing from the partnership. For instance, if the adjustment is a reduction of qualified research expenses, the IRS may determine the amount of the adjustment as if all partners claimed a credit with respect to their allocable portion of such expenses under section 41, rather than a deduction under section 174. To the extent supported by the facts, the partnership may take steps through the modification procedures set forth in proposed § 301.6225–2 to provide the IRS with information about specific partners and how those partners took items from the partnership into account.

The modification process, discussed later in this preamble, is the method for the partnership to request that the IRS modify an imputed underpayment to more closely reflect the tax consequences that would have resulted if the partners had taken the adjusted items into account correctly on their original returns for the year that includes the reviewed year of the partnership.

B. Calculation of the Imputed Underpayment

Proposed § 301.6225–1(c) provides rules for the calculation of an imputed underpayment. Proposed § 301.6225–1(c)(1) provides that the imputed underpayment is calculated by multiplying the total netted partnership adjustment by the highest rate of federal income tax in effect for the reviewed year (as defined in proposed § 301.6241–1(a)(8)) under section 1 or 11. The product of that amount is then increased or decreased by any adjustment made to the partnership's credits. If the result of this summation is a net positive adjustment, the resulting amount is the imputed underpayment, and, if it results in a net non-positive amount, the result is an adjustment that does not result in an imputed underpayment. See proposed § 301.6225–1(c)(2).

Proposed § 301.6225–1(c)(3) defines the *total netted partnership adjustment* for purposes of calculating the imputed underpayment in proposed § 301.6225–1(c)(1) as the sum of all net positive adjustments in the residual grouping as determined in accordance with paragraph (d)(2)(v) of this section, plus the sum of all net positive adjustments in the reallocation grouping as determined in accordance with paragraph (d)(2)(ii) of this section.

i. Grouping and Netting of Adjustments

Under proposed § 301.6225–1(d), adjustments are grouped together, which provides a framework for the netting of adjustments appropriately. Within each grouping, adjusted items may be further divided into subgroupings depending on their character or to account for preferences, sources, categories, limitations, or other restrictions under Title 26 (for example, adjustments to short-term capital gain will generally be in a different subgrouping from adjustments to long-term capital gain). See proposed § 301.6225–1(d)(1). The groupings and subgroupings provide the IRS with the ability to net adjustments according to applicable limitations and restrictions, but the Treasury Department and the IRS seek comments on any specific items that may require special rules or special subgroupings.

Proposed § 301.6225–1(d)(2)(i) provides that there are three types of groupings, and that the adjustments are divided in order into those groupings. First, adjustments that reallocate items among the partners (reallocation grouping) are grouped together. Second, adjustments to the partnership's credits (credit grouping) are grouped together. Third, all remaining adjustments (residual grouping) are grouped together according to the character, preferences, restrictions, and other limitations of the item adjusted. Within each grouping, there might be more than one subgrouping based on a partnership's particular adjustments. For instance, within the residual grouping, there might be an ordinary subgrouping as well as a capital subgrouping. Adjustments that generally affect, or that are affected by, the application of

any rules related to preferences, limitations, restrictions, or conventions, will generally be taken into account within their own respective grouping or subgrouping.

Proposed § 301.6225–1(d)(2)(ii) describes the reallocation grouping. Any adjustment that reallocates an item from one or more partners to one or more other partners is treated as two adjustments. The first adjustment is a decrease in the amount of the items allocated by the partnership on its return to one or more partners. The second adjustment is an increase in the amount of the items allocated by the IRS to the other partner(s). Each adjustment is grouped in its own reallocation subgrouping to prevent the two adjustments from netting to zero. After application of the netting rules under proposed § 301.6225–1(d)(3), any net non-positive adjustment is disregarded in the calculation of the imputed underpayment under proposed § 301.6225–1(d)(3)(ii)(A). An adjustment that results in a net non-positive adjustment is an adjustment that does not result in an imputed underpayment because the reallocation of an item among partners is one of the circumstances described in proposed § 301.6225–1(c)(2).

The credit grouping described in proposed § 301.6225–1(d)(2)(iii) includes all adjustments to items that the partnership claimed or could have claimed as a credit on the partnership's return. The Treasury Department and the IRS seek comments on whether additional rules should be proposed regarding how the credits are grouped together, or whether such credits should be applied in a particular order, similar to the order required for general business credits as reported on Form 3800, *General Business Credit.*

A paragraph is reserved in proposed § 301.6225–1(d)(2)(iv) for special rules relating to the treatment of certain creditable expenditures. This paragraph is reserved to provide rules applicable with respect to adjustments to items that are, or could be, reported by the partnership as expenditures that may be treated as a credit when taken into account by a partner. The Treasury Department and the IRS also seek comments on the appropriate treatment of items reported by the partnership as expenditures that may be treated as a credit when taken into account by a partner.

The third grouping is the residual grouping, which is described in proposed § 301.6225–1(d)(2)(v). The residual grouping includes all other adjustments, which are grouped according to character (for instance, ordinary or capital) and other limitations under the Code. The adjustments of a particular partnership may warrant further subgroupings for other items (for instance, long-term capital versus short-term capital). An adjustment that recharacterizes the character of an item is treated as two separate adjustments, one adjustment decreasing the amount of the item as reported by the partnership and a second adjustment increasing the amount of the item as recharacterized by the IRS. Each adjustment is grouped separately with similar items.

Proposed § 301.6225–1(d)(3) describes the rules for netting items after separating the items into their groupings and subgroupings. First, proposed § 301.6225–2(d)(3)(i) provides that the IRS will net items within the same grouping or subgrouping. For instance, all ordinary adjustments (assuming no other restrictions under the Code) are netted against each other, regardless of whether such adjustments were part of related transactions or whether they were increases or decreases to income, but none of the ordinary adjustments are netted against the adjustments in the capital subgrouping. Adjustments in the capital subgrouping are netted against each other within that subgrouping. Adjustments from one taxable year may not be netted against adjustments from another taxable year, even if they would otherwise be part of the same subgrouping. See proposed § 301.62251–1(c)(4).

Once adjustments within each subgrouping have been netted, each grouping or subgrouping will have either a net positive adjustment (as defined in proposed § 301.6225–1(d)(3)(ii)(B)) or a net non-positive adjustment (as defined in proposed § 301.6225–1(d)(3)(ii)(C)). Any netted amount that is a net non-positive adjustment in the reallocation grouping or the residual grouping is an adjustment that does not result in an imputed underpayment under proposed § 301.6225–1(c)(2), and the rules described in proposed § 301.6225–3 apply regarding the treatment of the partnership adjustments that were netted giving rise to that net non-positive adjustment. Any such net non-positive adjustment is disregarded for the remaining purpose of calculating the imputed underpayment. See proposed § 301.6225–1(c)(2) (which lists this netting step as another circumstance in which net non-positive adjustments are adjustments that do not result in an imputed underpayment) and § 301.6225–1(d)(3)(ii)(A).

The exception to this rule under proposed § 301.6225–1(d)(3)(ii)(A) (regarding disregarding net non-positive adjustments) is with respect to the credit grouping because adjustments to credits are applied to the total netted partnership adjustment after the rate is applied as described in proposed § 301.6225–1(c)(1). If the net credits reduce the amount calculated under proposed § 301.6225–1(c)(1) to zero or less than zero, the partnership adjustments resulting in the total netted partnership adjustment and the adjustments to credits taken into account in calculating the zero or less than zero amount are all partnership adjustments that do not result in an imputed underpayment under proposed § 301.6225–1(c)(2).

Proposed § 301.6225–1(d)(3)(iii) describes how adjustments are treated within each particular grouping or subgrouping (other than the credit grouping) for purposes of netting. Increased gain is treated as increased income, decreased gain is treated as decreased income, increased loss is treated as decreased income, and decreased loss is treated as increased income. The credit grouping is excluded from this treatment because any adjustment to a credit does not result in an increase or decrease of income but rather in an adjustment to the amount of tax owed after the tax rate is applied under proposed § 301.6225–1(c)(1).

ii. Multiple Imputed Underpayments

Proposed § 301.6225–1(e) provides rules for multiple imputed underpayments. Each administrative proceeding that ends with the determination by the IRS of an imputed underpayment will result in a general imputed underpayment. The IRS may determine, in its discretion, a specific imputed underpayment on the basis of certain adjustments allocated to one partner or a group of partners based on the items or adjustments having the same or similar characteristics, based on the group of partners sharing similar characteristics, or based on the partners having participated in the same or similar transactions. There may be multiple specific imputed underpayments depending on the adjustments. For instance, some transactions may not involve all partners, and there may be a reason to place certain adjustments or even entire groupings into a specific imputed underpayment (described in proposed § 301.6225–1(e)(2)(iii)), while other adjustments remain in a general imputed underpayment (described in proposed § 301.6225–1(e)(2)(ii)).

For example, if a partnership intends to elect the alternative to payment of an imputed underpayment under section

6226 and the regulations thereunder, and, based on the appropriate allocable shares, a particular adjustment should be allocated to one partner or group of partners, the IRS could separate that adjustment into a separate imputed underpayment, called a specific imputed underpayment. The partnership could then elect to apply the rules under section 6226 to the specific imputed underpayment for which a single partner or group of partners would be responsible and the partnership could pay the general imputed underpayment at the partnership level.

The option to create multiple imputed underpayments provides flexibility for the partnership, the partners, and the IRS to address fact-specific issues that may arise as part of the administrative proceeding at the partnership level. If the partnership would like to change the number or composition of the imputed underpayments that are listed on the NOPPA, the partnership may request modification under proposed § 301.6225–2(d)(6).

The examples in proposed § 301.6225–1(f) demonstrate the rules of this section.

C. Modification of an Imputed Underpayment

Proposed § 301.6225–2(a) provides general rules for modification of an imputed underpayment. A partnership that has received a NOPPA may request modification of a proposed imputed underpayment. The effect of modification on the proposed imputed underpayment is described in proposed § 301.6225–2(b). Only the partnership representative may request modification of an imputed underpayment.

With respect to adjustments that do not result in an imputed underpayment, modification is only permissible if the partnership also has an imputed underpayment that is eligible to be modified under proposed § 301.6225–2. Section 6225(c) refers to modification of the imputed underpayment and does not address modification with respect to adjustments that do not result in an imputed underpayment. Section 6225(c)(2)(B), however, requires a partner whose allocable share of a reallocation adjustment does not result in an imputed underpayment to file an amended return and take into account the partner's share in order for the partnership to receive modification of the imputed underpayment. As a result, section 6225 clearly contemplates the possibility of requesting modification with respect to an adjustment that does not result in an imputed underpayment. Accordingly, proposed § 301.6225–2(a) allows for such modifications provided the partnership has an imputed underpayment that is set forth in the NOPPA. If the NOPPA does not set forth an imputed underpayment, the partnership may not request a modification with respect to adjustments that do not result in an imputed underpayment under proposed § 301.6225–2.

i. Effect of Modification

Proposed § 301.6225–2(b) provides the rules describing the effect of modification on the calculation of the imputed underpayment. Some modifications may result in excluding certain adjustments, or portions thereof, from the calculation of the imputed underpayment, such as modification under proposed § 301.6225–2(d)(2), (d)(3), (d)(5), (d)(7), (d)(8), and, if applicable, (d)(9). When the IRS approves one of those types of modification, the portion of the partnership adjustment attributable to that partner (or indirect partner) is removed from the calculation of the netted grouping amounts under proposed § 301.6225–1, resulting in a reduction of the total netted partnership adjustments underlying the calculation of the imputed underpayment. This reduction in the total netted partnership adjustments does not, however, affect the amount of the partnership adjustment itself, only whether the adjustment is included in the calculation of the imputed underpayment. For instance, assume the IRS makes an adjustment by increasing the valuation of an asset from $100 to $1100 (a $1000 adjustment). One partner files an amended return to take into account that partner's 50 percent share of the adjustment. The result is that only $500 worth of adjustments are included in the imputed underpayment calculation. The value of the asset remains $1100 as determined by the IRS, and the adjustment remains $1000, notwithstanding the amended return that is filed by the partner.

Proposed § 301.6225–2(b)(3) provides that modification with respect to a partnership with partners for which rate modification under section 6225(c)(4) and proposed § 301.6225–2(d)(4) is approved affects the taxable rate applied to the total netted partnership adjustment and does not affect the extent to which partnership adjustments factor into the calculation of the imputed underpayment. This rule may also apply in appropriate circumstances to modifications under proposed § 301.6225–2(d)(8) and proposed § 301.6225–2(d)(9). Proposed § 301.6225–2(b)(3) provides the method for calculating the partnership's ''rate-modified netted partnership adjustment'' and imputed underpayment when rate modification under proposed § 301.6225–2(d)(4) is approved.

A specific rule applies to rate modification with respect to special allocations that requires each partner's distributive share to be determined based on the amount of net gain or loss to the partner that would result if the partnership had sold all of its assets at their fair market value as of the close of the reviewed year of the partnership. See proposed § 301.6225–2(b)(3)(iv). If a partnership requests more than one type of modification, proposed § 301.6225–2(b)(1) provides an ordering rule that states that rate modification is applied after the other types of modification specified in proposed § 301.6225–2(d).

Proposed § 301.6225–2(b)(4) provides that the IRS may prescribe other guidance regarding the effect of other modifications referenced in proposed § 301.6225–2(d)(9), and the Treasury Department and the IRS seek comments on other appropriate modifications and their effect on the calculation of an imputed underpayment. In particular, the Treasury Department and the IRS request comments on modifications that may be considered appropriate where a partner is a foreign person and thus may be subject to gross basis taxation under section 871(a) or 881(a), or where a partner, indirect partner, or the partnership is entitled to a modified rate under the Code or as a resident of a country that has in effect an income tax treaty with the United States.

ii. Time, Form, and Manner for Requesting Modification

Proposed § 301.6225–2(c) provides time, form, and manner rules for when a partnership may request modification. Modification must be requested in the form and manner prescribed by the IRS within the 270-day period described in proposed § 301.6225–2(c)(3)(i). The Treasury Department and the IRS request comments on the coordination of these rules with the mutual agreement procedures available under income tax treaties that a partnership, partner, or indirect partner may invoke in order to determine eligibility for treaty benefits that may affect the calculation of the imputed underpayment.

Proposed § 301.6225–2(c)(1) provides that a determination with respect to a modification request does not preclude the IRS under section 7605(b) from initiating an administrative proceeding with respect to a partner, even if the IRS approves modification based on the

partner's actions or status. The IRS may rely on the facts provided to the IRS by the partnership representative to determine whether a modification request is proper and is not required to conduct an examination of the partners that form the basis of any modification request. Any determination by the IRS with respect to a modification request is a determination as part of the administrative proceeding with respect to the partnership. The IRS may approve modification based on an adjustment in an amended return filed for modification purposes and also examine the amended return in a separate proceeding with respect to that partner.

Similarly, if the IRS approves a modification based on the tax-exempt status of a partner, the IRS is not precluded from examining whether the partner was in fact tax-exempt for the same year in a separate proceeding. A review of or request for any information or documents provided as part of modification does not constitute an examination, inspection, or administrative proceeding with respect to any person other than the partnership. Accordingly, even in the case of an election under section 6226, and where certain modifications may affect what adjustments a partner take into account under proposed § 301.6226–3, nothing in these proposed regulations prohibits the IRS from examining that partner's return and re-determining items that were affected by a previously approved modification.

A partnership requesting modification must substantiate the facts supporting a request for modification to the satisfaction of the IRS. The particular documents and other information that may be required are based on the type of modification requested. The IRS may, in forms, instructions, or other guidance, require particular documents or other information to substantiate a particular type of modification or impose other information-reporting or recordkeeping requirements on partnerships requesting modification.

For all requests, the partnership representative must furnish to the IRS upon request, a detailed description of the structure, allocations, ownership, and ownership changes of the partnership, its partners, and, if relevant, any indirect partners for each taxable year relevant to the request, as well as all partnership agreements (including side agreements) for each relevant taxable year with respect to each modification request. In the case of a modification requested by the partnership with respect to an indirect partner, the IRS may require certain information related to the pass-through partner(s) through which the indirect partner holds its interest in the partnership subject to the administrative proceeding. For instance, in the case of amended return modification by an indirect partner, the IRS may require the partnership to provide any information necessary to determine whether the indirect partner has taken the correct amount of the adjustments into account. Such information may include information similar to amended returns for any partnership-partner through which the adjustments are flowed before being taken into account by the indirect partner. The IRS will deny modification if a partnership fails timely to provide information the IRS determines is necessary to support and substantiate a request for modification.

Proposed § 301.6225–2(c)(3)(ii) provides that the partnership may request an extension of the 270-day period described in proposed § 301.6225–2(c)(3)(i), and proposed § 301.6225–2(c)(3)(iii) provides that the 270-day period described in proposed § 301.6225–2(c)(3)(i) closes early when the partnership representative and the IRS agree, in writing, to waive the 270-day delay between the mailing of the NOPPA and when the IRS may first issue an FPA described in section 6231(a) (flush language). The waiver of the 270-day period would prevent the partnership from providing modification-related information after the date the waiver was executed, and it would also allow the IRS to issue an FPA earlier than normal. This may be desirable for a partnership if the partnership does not intend to seek modification, but the partnership does want to litigate the adjustments or make an election under section 6226. This could also occur in conjunction with the partnership's waiver of the requirement that the IRS issue an FPA before making a partnership adjustment, for example, if the partnership agrees to the adjustments. Proposed § 301.6225–2(c)(4) describes the method by which the IRS will approve modification requests.

D. Types of Modification

Proposed § 301.6225–2(d) provides seven enumerated types of modifications the IRS will consider if requested by the partnership. Additionally, the IRS may consider alternative forms of modification under proposed § 301.6225–2(d)(9). Unless otherwise stated in proposed § 301.6225–2(d), a partnership may request any or all of the types of modification described in that paragraph. See proposed § 301.6225–2(d)(1).

i. Amended Returns

A partnership may request modification of an imputed underpayment if a reviewed year partner (or indirect partner) of a partnership files one or more amended returns that take into account a partnership adjustment or a portion of a partnership adjustment. See proposed § 301.6225–2(d)(2)(i). The reviewed year partner (or indirect partner) filing the amended return(s) must take into account the appropriate adjustments (or portion thereof) and also address the effects of such adjustments on any tax attributes (as defined in proposed § 301.6241–1(a)(10)) that must be adjusted because the partnership adjustments were taken into account. For the partnership to receive modification as a result of a partner's amended returns, the partner must file amended returns for all years with respect to which any tax attribute is affected by reason of the partnership adjustment(s) taken into account and include any payment due. The Treasury Department and the IRS seek comments on how best to streamline this process for ease of administering the amended return modification process.

The partners' amended returns must be filed with the IRS in accordance with the applicable forms and instructions prescribed by the IRS, and the partnership representative must provide affidavits from each partner for which modification is sought that the partner did in fact file amended returns and make appropriate payments. See proposed § 301.6225–2(d)(2)(iii). Any payment due as a result of adjustments taken into account on an amended return is due at the time the partner's amended return is filed. See proposed § 301.6225–2(d)(2)(ii).

Any partner that files an amended return for modification purposes and is required to make a payment of any kind with that amended return must do so prior to the expiration of the period of limitations under section 6501 for the modification year(s). See proposed § 301.6225–3(d)(2)(v). Section 6225(c)(2) provides that partners may file amended returns ''notwithstanding section 6511,'' and consequently, a partner may file an amended return that seeks a refund (such as in the case of a reallocation of a distributive share as described in proposed § 301.6225–2(d)(2)(vi)) at any time. A request for refund filed as part of an amended return filed for modification purposes outside the period set forth in 6511 may only request a refund for adjustments related to the partnership proceeding and relevant correlative adjustments. A

partner may not request a refund through the amended return modification procedures outside the period set forth in section 6511 for adjustments that are not a direct result of the partnership adjustments determined in the partnership-level proceeding. See proposed § 301.6225–2(d)(2)(v)(B).

If, however, the IRS must make an assessment to collect a payment due with respect to an amended return filed during modification, the partner's period of limitations under section 6501 must not have expired at the time the amended return is filed. Nothing in the proposed regulations prevents partners from signing an extension of the period of limitations for partnership adjustments at the time the IRS initiates the partnership administrative proceeding or at any other time prior to the expiration of the period of limitations under section 6501. The IRS recognizes that securing such extensions may not be possible in all cases, but doing so may be an option for certain partners and partnerships. Alternatively, there may be other modification alternatives for a partner whose assessment period under section 6501 with respect to the modification years (as defined in proposed § 301.6225–2(d)(2)(iv)) has expired. A partner may, for example, be able to enter into a closing agreement that allows for treatment similar to an amended return and to make a payment on behalf of the partnership's liability in recognition of what the partner would have filed and paid if the partner's assessment period had not already expired.

In general, there is no requirement that all reviewed year partners of a partnership file amended returns for the partnership to request amended return modification. However, in the case of a reallocation adjustment, in general, in order for the IRS to approve the modification, all partners affected by the reallocation adjustment must file amended returns related to the reallocation adjustment. See proposed § 301.6225–2(d)(2)(vi). In certain cases, a partnership may be able to demonstrate that a partner subject to a reallocation adjustment has taken into account that partner's relevant adjustment via some other type of modification that may not require an amended return. For instance, if one partner is a tax-exempt entity for which the partnership may request modification based on that partner's tax-exempt status (as described in proposed § 301.6225–2(d)(3)), and that partner is subject to a reallocation adjustment, it may be unnecessary for the tax-exempt partner to file an amended return in order for the partnership to request modification in accordance with the requirements of proposed § 301.6225–2(d)(2)(vi). Such determinations will depend on the facts and circumstances related to the particular modification and are within the discretion of the IRS.

The Treasury Department and the IRS propose a specific rule that addresses pass-through partners in proposed § 301.6225–2(d)(2)(vii). A pass-through partner (as defined in proposed § 301.6241–1(a)(5)) may, for modification purposes only, file an amended return and take into account its allocable share of the adjustments. A pass-through partner that does so must pay an amount calculated in the same manner as the safe harbor amount under proposed § 301.6226–2(g) on the pass-through partner's share of the partnership adjustment except that, for purposes of calculating the payment amount, instead of using the tax rate under section 6225(b)(1)(A), the tax rate is the rate determined by substituting the total net income of the pass-through partner for the taxable year (as adjusted) for taxable income in section 1(c) of the Code (determined without regard to section 1(h)).

An amended return filed by a pass-through partner without a payment (when required based on the adjustments) will not result in modification for the partnership. See proposed § 301.6225–2(d)(2)(vii). An amended return filed by a pass-through partner is not an administrative adjustment request as defined in section 6227 and the regulations thereunder, but rather is a stand-alone document that is filed solely for modification purposes.

Regardless of the number of pass-through partners or tiers involved in a partnership structure, all amended returns filed by a pass-through partner and its owners must be filed with the IRS and any tax, penalties, additions to tax, and interest due with respect to such amended returns must be paid within the 270-day modification period described in proposed § 301.6225–2(c)(3)(i). Modification is allowed to the extent amended returns are filed and any necessary payments are made within the 270-day time period.

Because amended return modification requires a partner to fully take into account all adjustments allocable to that partner, a partnership may not request additional modification with respect to a partner who files and takes into account adjustments on an amended return. See proposed § 301.6225–2(d)(2)(i). This restriction exists because a partner that files an amended return has fully accounted for the adjustment and allowing, for example, a further rate reduction would produce a double benefit at the partnership level.

If a partner files an amended return for modification purposes which leads to a reduction in the imputed underpayment based on the IRS's approval of that modification request, the partner waives its ability to file further amended returns for the modification years with respect to items related to the partnership adjustments and the imputed underpayment unless the partner receives permission from the IRS to do so. See proposed § 301.6225–2(d)(2)(vii)(B). The intent of this provision is to prevent a partner from filing an amended return for modification purposes, paying some additional amount due and then, after the partnership receives modification, filing another amended return claiming a refund for the same amount on which the partnership relied as part of its modification request.

In addition, partners filing amended returns under section 6225 do so as part of the proceeding under subchapter C of chapter 63, which means that they are bound by the partnership representative's actions pursuant to section 6223. If the partnership representative agrees to an imputed underpayment that was modified due to a partner filing an amended return, the partner is bound to that modification through section 6223 and may not change the partner's position related to the partnership adjustments that were taken into account in a way that is inconsistent with the partnership representative's actions. Nonetheless, the IRS understands that situations may arise in which a partner needs to file a further amended return for an unrelated reason, and the partner may request permission from the IRS to do so if necessary. The Treasury Department and the IRS seek comments on the most efficient ways that taxpayers may request permission from the IRS to file a subsequent amended return.

In addition, a partner can only file an amended return with respect to items stemming from a partnership under the procedures set forth in subchapter C of chapter 63, that is, the amended return modification procedures. See proposed § 301.6225–2(d)(2)(vii)(A).

ii. Tax-Exempt Partners

A partnership may request modification based on the status of its tax-exempt partners. If the IRS approves that modification, the imputed underpayment is calculated without regard to the portion of the partnership adjustment that is allocable to the tax-

exempt partner and with respect to which the partner would not be subject to tax for the reviewed year by reason of its status as a tax-exempt entity. The modification request is based on the tax-exempt status of the partner during the reviewed year. See proposed § 301.6225–2(d)(3)(i).

For the purposes of modification, section 6225(c)(3) provides that a tax-exempt entity is defined pursuant to section 168(h)(2). Proposed § 301.6225–2(d)(3)(ii) further provides that status as a tax-exempt entity for purposes of modification is determined in accordance with the definitions provided under section 168(h)(2)(A), (C), and (D) without reference to section 168(h)(2)(B) and (E). Section 168(h)(2)(B) and (E) do not define categories of entities that are treated as tax-exempt entities, but rather impose limits on the extent to which certain property leased to tax-exempt entities is entitled to special treatment as ''tax-exempt use property'' with respect to depreciation deductions available to a lessor. As such, those provisions are inapplicable to the determination of tax-exempt status for purposes of the modification process.

Some tax-exempt entities may receive income for which they are subject to tax. For example, section 511 imposes a tax on unrelated business taxable income received by certain tax-exempt entities. Additionally, section 871, section 881, and section 882 impose tax on certain income received by foreign persons. A partnership may request modification based on an adjustment allocable to a tax-exempt partner only to the extent that the partnership demonstrates to the satisfaction of the IRS that the tax-exempt partner would not have been subject to tax with respect to the adjustment allocable to the partner for the reviewed year. See proposed § 301.6225–2(d)(3)(iii).

A partnership's decision either to request or not to request modification in the course of an audit under these proposed regulations may raise issues concerning whether and to what extent any benefit that might result from its request or failure to request modification could be considered to have been provided to any person in lieu of to a tax-exempt partner (whether a current or former partner, and at any ''tier'' of the partnership). For example, such a transfer of benefit may raise issues for one or more partners with respect to: (1) The status of a tax-exempt partner because of private inurement or private benefit under section 501(c); (2) excise taxes under chapter 42 of subtitle D of the Code or under sections 4975, 4976, or 4980; or (3) requirements under title I of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829 (1974)) as amended (ERISA), such as the fiduciary responsibility rules under part 4 thereof. Some of these issues may be addressed by including appropriate provisions in the partnership agreement. However, the Treasury Department and the IRS request comments from the public on whether guidance is needed to address these potential issues and, if so, on possible ways to resolve such issues. Any such comments related to title I of ERISA will be shared with the Department of Labor.

iii. Rate Modification

Section 6225(c)(4) provides the opportunity for a partnership to request to modify an imputed underpayment by changing the tax rate applied to the portion of the total netted partnership adjustment allocable to a C corporation or an individual with respect to capital gains and qualified dividends. If the partnership has partners that are C corporations or individuals, the partnership may request that a lower rate apply to those portions, but that lower rate will be the highest rate in effect with respect to the type of income and partner for whom modification is requested. See proposed § 301.6225–2(d)(4).

iv. Certain Passive Losses of Publicly Traded Partnerships (PTPs)

Section 6225(c)(5) provides an opportunity for publicly traded partnerships (as defined in section 469(k)(2)) to request to modify an imputed underpayment in the case of a net decrease in a specified passive activity loss for specified partners. Proposed § 301.6225–2(d)(5)(ii) defines specified passive activity losses, and proposed § 301.6225–2(d)(5)(iii) defines specified partners. This modification is available both to partnerships that are publicly traded partnerships and with respect to partners (and indirect partners) that are publicly traded partnerships. The partnership requesting modification must report to all specified partners that the partnership has adjusted the amount of their suspended passive loss carryovers at the end of the adjustment year by the amount of any passive losses applied in connection with such modifications. The reduction in suspended passive loss carryovers is binding on the specified partners pursuant to section 6223 and the regulations thereunder. The Treasury Department and the IRS seek comments on how the requirement to notify partners can most efficiently be accomplished.

v. Other Forms of Modification Under Section 6225(c)(6)

Section 6225(c)(6) provides that the IRS may prescribe additional types of modification through regulations. In these proposed regulations, the IRS is proposing three specific additional methods of modification and one general provision for additional types of modification to be considered at a later time.

Proposed § 301.6225–2(d)(6) allows a partnership to request modification of the number and composition of imputed underpayments. This provision specifically allows modifications of the process described in proposed § 301.6225–1(e), in which a specific imputed underpayment may be appropriate. The IRS is not obligated to implement this modification if it determines it is appropriate to reflect the partnership adjustments in imputed underpayments in a manner different than requested by the partnership. For instance, the IRS may determine it is appropriate to deny the calculation of a specific imputed underpayment by the partnership if, as a result of the specific imputed underpayment calculation, there is an increase in number of the partnership adjustments that net to a net non-positive amount, causing them to be disregarded and treated as adjustments that do not result in an imputed underpayment, which would shift the net losses away from the partnership and the reviewed year and to the adjustment year.

A special modification has been allowed in proposed § 301.6225–2(d)(7) for partners that are qualified investment entities described in section 860. These entities may distribute deficiency dividends after the NOPPA has been issued, and, if the entities do so in compliance with section 860 and the regulations thereunder, the IRS will treat the amount allowed as a deficiency dividend deduction under section 860(a) as having been taken into account by a partner in a manner similar to an amended return modification. One concern regarding this form of modification is that a NOPPA proposes an imputed underpayment, but it is not a final amount, in that the partnership may still challenge the amount in the IRS Office of Appeals or in court, but, once a deficiency dividend is distributed and claim therefore is filed, the qualified investment entities have no opportunity to change their position if the partnership obtains a favorable result at a later date. Given this lack of finality, the Treasury Department and the IRS seek comments on whether this provision adequately allows qualified

investment entities to use the modification process.

Finally, the IRS may take into account any closing agreements entered into by partners pursuant to section 7121 and will allow appropriate modification based on the contents of that closing agreement. See proposed § 301.6225–2(d)(8). This type of modification may provide some flexibility for taxpayers for which other forms of modification may prove burdensome or difficult. In certain cases, however, closing agreements may not be appropriate for partners seeking to modify an imputed underpayment because the finality of a closing agreement may limit a partnership's ability to challenge the underlying adjustments in the IRS Office of Appeals or in court.

In addition to the enumerated types of modification described in proposed § 301.6225–2(d)(2) through (8), the IRS may, in its discretion, consider alternative types of modification not specifically discussed in proposed § 301.6225–2(d); the documentation necessary to substantiate such modifications may be set forth in forms, instructions, or other guidance prescribed by the Department of Treasury or the IRS. See proposed § 301.6225–2(d)(9). The IRS may issue further guidance to establish procedures related to additional alternative forms of modification. As with all forms of modification, the partnership must demonstrate that an alternative modification is accurate and appropriate.

The examples in proposed § 301.6225–2(e) demonstrate the rules of § 301.6225–2.

E. Treatment of Adjustments That Do Not Result in an Imputed Underpayment

Proposed § 301.6225–1(c)(2) sets forth the three circumstances in which partnership adjustments do not result in an imputed underpayment. Under that paragraph, a partnership adjustment does not result in an imputed underpayment: (1) If the adjustment relates to a distributive share reallocation that is disregarded under proposed § 301.6225–1(d)(2)(ii), (2) if after grouping and netting the adjustments, the result is a net non-positive adjustment under proposed § 301.6225–1(d)(3)(ii), or (3) if the calculation under proposed § 301.6225–1(c)(1) of this section results in an amount that is zero or less than zero.

Proposed § 301.6225–3 sets forth the rules for the treatment of adjustments that do not result in an imputed underpayment. In general, such an adjustment is taken into account by the partnership in the adjustment year as a reduction in non-separately stated income or as an increase in non-separately stated loss depending on whether the adjustment is to an item of income or loss. One of the exceptions to this rule is for separately stated items under section 702. Proposed § 301.6225–3(b)(2) provides that if an adjustment is to an item that is required to be separately stated under section 702, the adjustment shall be taken into account by the partnership on its adjustment year return as an adjustment to such separately stated item. Proposed § 301.6225–3(b)(3) provides that an adjustment to a credit is also taken into account as a separately stated item. However, if a section 6226 election is made with respect to an imputed underpayment, these rules do not apply to adjustments that are disregarded in computing the imputed underpayment with respect to which the section 6226 election was made. Such adjustments are taken into account by the reviewed year partners under section 6226.

i. Allocation of Adjustments That Do Not Result in an Imputed Underpayment

Generally, the proposed regulations are silent with respect to the allocation of adjustments that do not result in an imputed underpayment, leaving their allocation to the partnership agreement. Section 301.6225–3(b)(3) proposes rules, however, governing those allocations, or lack thereof, in limited circumstances.

An adjustment that does not result in an imputed underpayment pursuant to § 301.6225–1(c)(2)(i) is allocated to those adjustment year partners who are the reviewed year partners with respect to whom the amount was reallocated. This rule is intended to prevent the allocation of such an item back to the partner from whom it was reallocated in connection with the audit. If the reviewed year partners with respect to whom the amount was reallocated are not adjustment year partners, then such adjustment is allocated to the adjustment year partners who are the successors to those reviewed year partners or, if no successors are identifiable or do not exist, among adjustment year partners according to the adjustment year partners' distributive shares.

If as part of the modification process under § 301.6225–2, a partner takes into account an adjustment that would otherwise not result in an imputed underpayment, the adjustment is not allocated to any partner for the adjustment year because the reviewed year partner has already taken its share of the adjustment into account. See proposed § 301.6225–3(b)(5). Allocating such an adjustment in the adjustment year would result in double counting.

In addition, if proposed § 301.6226–3 applies with respect to an adjustment that does not result in an imputed underpayment, proposed § 301.6225–3 does not apply to that adjustment, and the adjustments are taken into account under the rules governing section 6226. See proposed § 301.6225–3(b)(6). Finally, the rules of subchapter K apply with respect to adjustments taken into account under § 301.6225–3. See proposed § 301.6225–3(c).

F. Notice 2016–23 Comments Related to Section 6225

As discussed above, section 6225 generally requires that adjustments be taken into account for purposes of computing the imputed underpayment, except that adjustments that do not result in an imputed underpayment are taken into account in the adjustment year. Section 6241(4) prescribes the treatment of the imputed underpayment as a nondeductible payment by the partnership, but is otherwise silent regarding the effect of the adjustments themselves on the partnership, the reviewed year partners, or the adjustment year partners. In response to Notice 2016–23, 2016–12 I.R.B. 490, commenters requested that the effect of partnership adjustments on basis be addressed in the regulations. One commenter recommended that regulations provide that a partnership that pays an imputed underpayment attributable to an adjustment to an item of income, gain, loss, or deduction, allocate that item in the adjustment year to the adjustment year partners treating such items as items of income, gain, loss, or deduction as non-taxable or deductible under sections 705(a)(1)(B) or (2)(B). The commenter explained that adjustments to basis and capital accounts are necessary to ensure that inside and outside basis remain congruent and to ensure that income, gain, loss, and deduction are not taxed twice. The Treasury Department and the IRS intend to adopt the approach the commenter recommended and to provide additional rules providing for adjustments to the inside basis and book value of any partnership property if the partnership adjustment is a change to an item of gain, loss, amortization or depreciation (*i.e.,* the change is basis derivative). Adjustment items taken into account on an amended return in connection with a modification to an imputed underpayment should not be allocated in the adjustment year. The proposed regulations reserve a place for these rules.

The commenter that recommended that a partnership allocate adjustment items in the adjustment year to the adjustment year partners as items described in sections 705(a)(1)(B) or (2)(B) also recommended that the allocations should be made in accordance with the partnership agreement and subject to the existing ''substantial economic effect'' requirements under section 704. The Treasury Department and the IRS request comments on whether, instead, it would be appropriate to allocate partnership adjustments that result in an imputed underpayment (meaning they are not taken into account by the partnership in the adjustment year under section 6225(a)(2)) only to adjustment year partners that are allocated part of the section 705(a)(2)(B) expense related to the partnership's payment of the imputed underpayment. The Treasury Department and the IRS also request comments on whether partnership adjustments arising from a reviewed year allocation that is reallocated from one partner to another partner require special rules restricting their allocations in the adjustment year to the partners from and to whom the item was reallocated and how to address successor partners or situations where the reviewed year partner has received a liquidating distribution and is no longer a partner.

Another commenter suggested that the IRS should have to provide evidence of a net underpayment of tax prior to making an adjustment because in some cases the tax may simply have been paid by the wrong partner (for example, with a reallocation adjustment). This suggestion is contrary to the compliance function of the IRS, and therefore, the IRS has declined to propose such a rule. The suggestion is also contrary to the statutory framework of the centralized partnership audit regime generally, and the rules for determining the imputed underpayment specifically. Section 6225(b)(2) specifically provides rules for how the IRS should make reallocation adjustments, which appear to be contrary to the commenter's suggestion.

Another commenter asked for safeguards similar to the mitigation provisions to prevent an overpayment of tax. The proposed regulations do not specifically address the mitigation provisions already in place under the Code, but there is nothing in the proposed regulations related to the centralized partnership audit regime that would prevent a partner or the partnership from pursuing mitigation, if appropriate. Therefore, no change in the mitigation procedures is necessary.

Commenters requested that the IRS address credit recapture situations and how those items are affected by the centralized partnership audit regime. The proposed regulations do not specifically address those issues. However, proposed § 301.6225–1(a)(2) provides that the calculation of the imputed underpayment will take into account all applicable preferences, restrictions, limitations, and conventions under the Code. Therefore, the proposed regulations provide flexibility to permit the IRS, during the examination, to account for credit recapture. The Treasury Department and IRS request additional comments on how credits should be managed within the framework of the proposed regulations.

One commenter discussed several ways to account for adjustments to creditable foreign tax expenditures (CFTEs) under the BBA. One recommended approach was to account for a decrease to CFTEs as a decrease to credits, while treating an increase to CFTEs as an adjustment that is disregarded for purposes of the imputed underpayment (to account for limitations and other considerations). Under this recommendation, an increase in CFTEs that is disregarded for purpose of calculating the imputed underpayment would be reported as a separately stated item in the adjustment year. The commenter noted that taxpayers would have the option to achieve an accurate result through the modification process. This recommendation is generally consistent with the broader approach taken in the proposed regulations; however, the Treasury Department and the IRS are reserving on the treatment of CFTEs and other adjustments affecting the amount of foreign tax credit that might be allowable to partners. The comments received did not provide a detailed recommendation with respect the treatment of other adjustments relating to the foreign tax credit calculation, and the Treasury Department and IRS request comments on how adjustments affecting foreign tax credit calculations should be taken into account within the framework of the centralized partnership audit regime, including possible ways to account for adjustments to items sourced or calculated at the partner level, such as interest expense and deemed paid credits.

Commenters asked that the tax attributes of adjustment year partners be taken into account when determining modification. This suggestion was not adopted for a number of reasons. First, section 6225(d) and proposed § 301.6241–1(a)(1) provide that the adjustment year is not determined until the adjustments are final. The partnership must seek modification prior to when the adjustment year is determined, potentially more than a calendar year before and even longer if the partnership seeks judicial review of the FPA. Because the adjustment year has not yet been determined at the time modification must be requested, there would be no way for the IRS or the partnership to know who the adjustment year partners should be.

Further, the text of section 6225 indicates that reviewed year partners are the appropriate partners with respect to which modification may be requested. For instance, the amended return modification provision under section 6225(c)(2)(A)(i) explicitly requires a partner to file an amended return for the partner's taxable year which includes the end of the reviewed year of the partnership. When filing that amended return, the partner must take the adjustments ''properly allocable to such partners'' in the reviewed year into account. Section 6225(c)(2)(A)(ii). It would be nonsensical for an adjustment year partner that was not also a reviewed year partner to file an amended return for the reviewed year taking any amount into account. Similarly, section 6225(b)(1)(A) provides that the imputed underpayment is calculated based on the highest tax rate in effect for the reviewed year, and rate modification under section 6225(c)(4)(A) relates specifically to a reduction in the rates in effect for the reviewed year by allowing for application of the rate of tax lower than the rate described in subsection (b)(1)(A), that is, the reviewed year rates. Finally, with respect to rate modifications under the rule for special allocations in section 6225(c)(4)(B)(ii), by statute, the rate modification is based specifically on a partner's distributive share of net gains and losses if the partnership had sold all of its assets at the close of the reviewed year. Such a rule cannot be applied to an adjustment year partner that was not also a reviewed year partner. In light of the statutory references to the reviewed year, it would be incongruous to key certain modifications off of the reviewed year partners and others off of adjustment year partners.

In addition, the partnership can control who its current year partners are and could admit partners to the partnership for the sole purpose of improving the results of a modification, even attempting to inappropriately eliminate the imputed underpayment. As a result, modification generally must

take into changes to tax that result from the reviewed year partner taking the partnership adjustments into account. Finally, modification applies to reviewed year partners because their attributes are the most relevant to determining the proper amount of taxes and other liabilities owed by the partnership and its partners with respect to partnership adjustments related to the reviewed year. Adjustment year partners' tax attributes are generally relevant to what is reported on the adjustment year return, not to the reviewed year exam.

Commenters requested clarification as to how modification would apply if only some of the partners filed amended returns. Section 6225(c)(2)(B) requires that all affected partners file amended returns only in the case of an adjustment involving the reallocation of distributive shares among partners. Proposed § 301.6225–2(b) provides the rules for how modification adjustments are taken into account in calculating the modified imputed underpayment, and proposed § 301.6225–2(d)(2) provides specific rules related to amended return modification. Other than in the case of a reallocation adjustment, these rules allow some partners to file amended returns without requiring that all partners file amended returns. A partnership will be granted amended return modification to the degree that the partners (or indirect partners) in a partnership participate in the amended return modification process.

Even in the case of a reallocation adjustment, if the partners can demonstrate the affected partners' adjustments were fully taken into account through some other form of modification, the IRS may determine that that requirement was met without all partners' filing amended returns because the partners have met the spirit of the statute's requirements (that is, taking into account adjustments at the partner level). With the exception of the reallocation adjustment rule, if some partners choose to participate in amended return modification, the partnership will receive modification for those partners' amended returns. The partnership will not receive modification for partners that choose not to file amended returns unless those partners satisfy another modification provision as demonstrated by the partnership.

Commenters requested clarification regarding whether a partner may file an amended return if the statute of limitations on assessment was closed for the year the partnership return was filed or to allow partners to file limited amended returns related to closed years. Proposed § 301.6225–2(d)(2)(v) prevents partners from filing amended returns for modification purposes that require payment of tax after the period of limitations on assessment under section 6501 is closed. Although section 6225(c)(2) provides that amended returns may be filed ''notwithstanding section 6511,'' the statute provides no such exception for the statute of limitations under section 6501. As a result, there are limits on which partners will be permitted to file an amended return under the modification procedures. Partners that are precluded from filing amended returns due to an expired section 6501 period may be eligible for other forms of modification, such as closing agreement modification under proposed § 301.6225–2(d)(8), or partners and the partnership may choose to make other arrangements where the partner pays the imputed underpayment on behalf of the partnership outside of the modification procedures.

Commenters requested that partners be able to modify at various tiers within a partnership's ownership structure (that is, modification of indirect partners). This suggestion has been adopted. For example, see the amended return modification under proposed § 301.6225–2(d)(2)(vii), which provides a special rule for pass-through partners. Under these rules, if the modification provisions are satisfied with respect to indirect partners, partnerships may seek modification with respect to the partners as well as the indirect partners.

Another commenter asked for an additional 270 days after the issuance of the notice of final partnership adjustment, during which the partners could file amended returns. Section 6225(c) provides that the information required for modification purposes must be provided to the IRS within 270 days of the issuance of the NOPPA unless the IRS consents to an extension. The proposed regulations closely follow these rules. Accordingly, a request for an extension of the 270-day period will be considered by the IRS on a case by case basis. See proposed § 301.6225–2(c)(3).

Commenters requested that partners be allowed to certify that they have filed amended returns so that the partners do not have to provide their amended return information directly to the partnership or the partnership representative. This suggestion was incorporated in proposed § 301.6225–2(d)(2)(iii). Under this section, partners must file their returns in accordance with forms and instructions for filing amended returns for modification purposes, and the partnership representative must provide certifications from those partners to the IRS employee conducting the administrative proceeding.

Commenters requested that the IRS allow the partners to pay any taxes due related to their amended returns either at the time the amended returns are filed or through any available IRS administrative collection process. The Treasury Department and the IRS declined to propose this rule at this time. The IRS seeks comments as to how the IRS might allow more flexibility for taxpayers with respect to payment, while at the same time ensuring that partners in partnerships that request amended return modification are committed to taking into account the adjustments relevant to their amended returns.

Commenters requested that an alternative modification be available to partners that involved a summary or schedule of adjustments that reflect what would happen if an amended return were filed, rather than requiring the partners to file amended returns. The IRS will take into account closing agreements entered into as partners to the degree they affect the imputed underpayment, and partners could use this modification option to accomplish the goal of avoiding amended returns. The Treasury Department and the IRS request comments on additional possible options for modification that would simplify the amended return process as well as the process for other types of modification.

Commenters requested that the IRS permit modifications for taxes already paid, for example, on a partner's reviewed year return filed inconsistently with the partnership's reviewed year return. This suggestion was not adopted, but the IRS will allow modification with respect to closing agreements entered into by partners and other modification options. See proposed § 301.6225–2(d). Other commenters requested that the IRS allow qualified investment entities to use the deficiency dividend procedures under section 860 in modification. The proposed regulations adopt this suggestion. See proposed § 301.6225–2(d)(7).

6. Election for the Alternative to Payment of the Imputed Underpayment

Proposed § 301.6226–1(a) provides that a partnership may elect under section 6226 to ''push out'' adjustments to its reviewed year partners rather than paying the imputed underpayment determined under section 6225. If a partnership makes a valid election in accordance with proposed § 301.6226–1,

the partnership is no longer liable for the imputed underpayment. A partnership may make an election under this section with respect to one or more imputed underpayments identified in an FPA. For example, where the FPA includes a general imputed underpayment and one or more specific imputed underpayments, the partnership may make an election under this section with respect to any or all of the imputed underpayments.

Proposed § 301.6226–1(b)(1) provides that if a partnership makes a valid election in accordance with proposed § 301.6226–1, the reviewed year partners of the partnership are liable for tax, penalties, additions to tax, and additional amounts, as well interest on such amounts, after taking into account their share of the partnership adjustments determined in the FPA. Any modifications approved by the IRS under proposed § 301.6225–2 are also reported to the reviewed year partners. In addition, under proposed § 301.6226–1(b)(2), adjustments that do not result in an imputed underpayment described in § 301.6225–1(c)(2)(i) and (ii) are not taken into account by the partnership in the adjustment year and instead are included in the reviewed year partners' share of the partnership adjustments reported to the reviewed year partners of the partnership.

Under proposed § 301.6226–1(c), an election under section 6226 is not valid unless the partnership complies with all the provisions for making the election under proposed § 301.6226–1 and the provisions under proposed § 301.6226–2 requiring the partnership to furnish statements to the reviewed year partners and file those statements electronically with the IRS. An election under proposed § 301.6226–1 may only be revoked with the consent of the IRS.

Proposed § 301.6226–1(c)(2) provides that if the IRS determines that an election under section 6226 is invalid, the IRS will notify the partnership and the partnership representative (within 30 days of the determination) that the election is invalid and provide the reason why the election is invalid. Proposed § 301.6226–1(c)(2) provides that a final determination that the election is invalid means that the partnership is liable for any imputed underpayment to which the election related, as well as any penalties and interest with respect to the imputed underpayment determined under section 6233. An election under proposed § 301.6226–1 is valid until the IRS determines the election is invalid.

A. Making the Election Under Section 6226

Under proposed § 301.6226–1(c)(3), a partnership may only make an election under section 6226 within 45 days of the date the FPA was mailed by the IRS. The time for filing the election may not be extended. The election must be signed by the partnership representative and filed with the IRS in accordance with forms, instructions, and other guidance. Proposed § 301.6226–1(c)(4)(i). Proposed § 301.6226–1(c)(4)(ii) provides that the election must include the name, address, and correct taxpayer identification number (TIN) of the partnership, the taxable year to which the election relates, the imputed underpayment(s) to which the election applies (if there is more than one imputed underpayment in the FPA), each reviewed year partner's name, address, and correct TIN, and any other information required under forms, instructions, and other guidance. A copy of the FPA to which the election relates must also be attached to the election.

As stated in proposed § 301.6226–1(d), an election under section 6226, which includes filing and furnishing the statements described in proposed § 301.6226–2, is an action taken by the partnership under section 6223 and the regulations thereunder. Accordingly, all reviewed year partners are bound by the election and each reviewed year partner must take the adjustments on the statement into account in accordance with section 6226(b) and report and pay additional chapter 1 tax (if any) pursuant to proposed § 301.6226–3. Therefore, a reviewed year partner may not treat items reflected on a statement described in proposed § 301.6226–2 inconsistently with how those items are treated on the statement that the partnership files with the IRS. See proposed § 301.6222–1(c)(2) (regarding items the treatment of which a partner is bound to under section 6223).

The Treasury Department and the IRS request comments from the public on whether guidance is needed on how to address potential issues arising with respect to tax-exempt entities as a result of an election under section 6226 and, if so, on possible ways to resolve such issues. For instance, if a tax exempt entity's share of the amounts under section 6226 is investment income, issues may arise regarding how a section 6226 election might affect the entity's public support calculation (if the entity is a publicly-supported organization) or the applicable net investment income tax (if the entity is a private foundation).

B. Filing Statements With the IRS and Furnishing Statements to Reviewed Year Partners

Proposed § 301.6226–2(a) provides that a partnership making an election under section 6226 must furnish statements to the reviewed year partners with respect to the partner's share of the adjustments and file those statements with the IRS in the time, form, and manner prescribed by proposed § 301.6226–2(b) and (c). Proposed § 301.6226–2(a) further provides that the statements furnished to the reviewed year partners under section 6226 are in addition to, and must be filed and furnished separate from, any other statements required to be filed with the IRS and furnished to the partners for the taxable year, including any Schedules K–1, *Partner's Share of Income, Deductions, Credits, etc.* Therefore, the partnership may not include the partnership adjustments that are to be taken into account by the reviewed year partners under section 6226 in any Schedule K–1 required to be furnished to the partner under section 6031(b). Similarly, the partnership must furnish separate statements for each reviewed year at issue and cannot combine multiple reviewed years (if any) into a single statement.

Under proposed § 301.6226–2(b), the statements must be furnished to the reviewed year partners no later than 60 days after the date the partnership adjustments become finally determined. The partnership adjustments become finally determined upon the later of the expiration of the time to file a petition under section 6234 or, if a petition is filed under section 6234, the date when the court's decision becomes final. Accordingly, if an FPA is mailed on June 30, 2020, and no petition is filed by the partnership, the partnership adjustments reflected in the FPA become finally determined on September 28, 2020 (at the conclusion of the 90-day petition period under section 6234). An example under proposed § 301.6226–2(b)(3) illustrates these rules.

Under proposed § 301.6226–2(b)(2), a partnership must furnish the statement to each reviewed year partner in accordance with the forms, instructions, or other guidance prescribed by the IRS. If the statements are mailed, it must mail the statements to each reviewed year partner using the current or last address for that partner that is known to the partnership. If a statement is returned to the partnership as undeliverable, a partnership must exercise reasonable due diligence to identify a correct address for the

reviewed year partner to which the statement relates. Examples under proposed § 301.6226–2(b)(3) illustrate this rule. Under proposed § 301.6226–2(c), the partnership must electronically file the statements with the IRS, along with a transmittal that includes a summary of the statements and any other information required in the forms and instructions, by the date the partnership is required to furnish the statements to the reviewed year partners.

Under proposed § 301.6226–2(d), if a partnership discovers an error on a statement filed with the IRS, the partnership must correct the error within 60 days of the due date for furnishing the statements to partners and filing the statements with the IRS, as described in proposed § 301.6226–2(b) and (c). Under proposed § 301.6226–2(d)(2)(ii), if a partnership discovers an error after this 60-day period, the partnership may only correct the statements with the permission of the IRS in accordance with the forms, instructions, or other guidance prescribed by the IRS. If the IRS discovers an error in the statements, the IRS may require the partnership to correct the errors. If a partnership fails to correct an error as required by the IRS, the IRS may treat this as a failure to properly furnish statements to partners and file the statements with the IRS, and thus, allow the IRS to determine that the election under proposed § 301.6226–1 is invalid with the result that the partnership is liable for the imputed underpayment to which the election related. A partnership corrects an error in a statement by electronically filing the corrected statement with the IRS and furnishing the corrected statement to the affected reviewed year partner in accordance with the forms, instructions, and other guidance prescribed by the IRS. The adjustments contained on a corrected statement are taken into account by the reviewed year partner in accordance with proposed § 301.6226–3 for the reporting year (as defined in proposed § 301.6226–3(a)). Proposed § 301.6226–2(d)(4). Because reviewed year partners cannot file inconsistently with any statements furnished by the partnership under proposed § 301.6226–2 (see proposed § 301.6226–1(d)), this provision provides a partner a period during which the partner may notify the partnership of any errors in a statement and have the partnership furnish a corrected statement to the partner and file the corrected statement with the IRS.

i. Contents of the Statements

The statements described in proposed § 301.6226–2 must include the name and correct TIN of the reviewed year partner; the current or last address of the reviewed year partner that is known to the partnership; the reviewed year partner's share of items originally reported to the partner (taking into account any adjustments made under section 6227); the reviewed year partner's share of the partnership adjustments and any penalties, additions to tax, or additional amounts; modifications attributable to the reviewed year partner; the reviewed year partner's share of any amounts attributable to adjustments to the partnership's tax attributes in any intervening year (as defined in proposed § 301.6226–3) resulting from the partnership adjustments allocable to the partner; the reviewed year partner's safe harbor amount and interest safe harbor amount (if applicable), as determined in accordance with proposed § 301.6226–2(g); the date the statement is furnished to the partner; the partnership taxable year to which the adjustments relate; and any other information required by the forms, instructions, or other guidance prescribed by the IRS. Proposed § 301.6226–2(e).

ii. Partner's Share of Adjustments and Other Amounts

Under proposed § 301.6226–2(f), a reviewed year partner's share of the adjustments that must be taken into account by the reviewed year partner must be reported to the reviewed year partner in the same manner as originally reported on the return filed by the partnership for the reviewed year. If the adjusted item was not reflected in the partnership's reviewed year return, the adjustment must be reported in accordance with the rules that apply with respect to partnership allocations, including under the partnership agreement. However, if the adjustments, as finally determined, are allocated to a specific partner or in a specific manner, the partner's share of the adjustment must follow how the adjustment is allocated in that final determination. Proposed § 301.6226–2(f)(1). In all cases, adjustments taken into account on any amended returns or closing agreements that are approved during the modification process under proposed § 301.6225–2(d)(2) and that are disregarded in determining the imputed underpayment are ignored for purposes of determining the reviewed year partners' share of the adjustments. However, these modifications are listed separately on the statements provided to the reviewed year partners. Although modifications are ignored for purposes of reporting the adjustments to the reviewed year partners, any reviewed year partner that took an adjustment into account and paid tax through an amended return or closing agreement as part of modification with respect to that adjustment will not be taxed a second time with respect to that adjustment. This is true for two reasons. First, the partnership will inform the partner of any such adjustment in the statement furnished to that partner, per proposed § 301.6226–2(e). Therefore, the partner will know upon receipt of a statement that certain adjustments were taken into account by the partner and that those adjustments were disregarded in determining the imputed underpayment. Second, when computing the partner's tax that stems from such an adjustment (as described in proposed § 301.6226–3), the partner will account for the adjustment as part of that process, and the computation of the tax will reflect that the partner had already paid tax with respect to that adjustment during the modification phase of the audit. An example in proposed § 301.6226–3(g) illustrates this concept.

Any penalties, additions to tax, or additional amounts are reported to the reviewed year partners in the same proportion as each partner's share of the adjustments to which the penalties relate, unless the penalty, addition to tax, or additional amount is specifically allocated to a specific partner(s) or in a specific manner by a final court decision or in the FPA, if no petition is filed. Proposed § 301.6226–2(f)(2). Accordingly, if a penalty is determined with respect to a specific item or items, that penalty is reported to the reviewed year partners in the same manner as the adjustments to that specific item or items, unless otherwise provided in the FPA or a final court decision, for instance in a situation where there are partner-specific defenses to a penalty determined at the partnership level. If a penalty, addition to tax, or additional amount does not relate to a specific adjustment, each reviewed year partner's share of the penalty, addition to tax, or additional amount is determined in accordance with how such items would have been allocated under rules that apply with respect to partnership allocations, including under the partnership agreement, unless it is allocated to a specific partner in a specific manner in a final determination of the adjustments, in which case it is allocated in accordance with the final determination.

C. Computation of the Tax Resulting From Taking Adjustments Into Account

Under proposed § 301.6226–3, a reviewed year partner that is furnished a statement under proposed § 301.6226–2 is required to pay any additional chapter 1 tax (additional reporting year tax) for the partner's taxable year which includes the date the statement was furnished to the partner in accordance with proposed § 301.6226–2 (the reporting year) that results from taking into account the adjustments reflected in the statement. The additional reporting year tax is either the aggregate of the adjustment amounts, as determined in proposed § 301.6226–3(b), or, if an election is made under proposed § 301.6226–3(c), a safe harbor amount.

In addition to being liable for the additional reporting year tax, the reviewed year partner of a partnership that makes an election under section 6226 must also pay, for the reporting year, the partner's share of any penalties, additions to tax, or additional amounts reflected in the statement, and any interest on such amounts. Interest is determined in accordance with proposed § 301.6226–3(d).

i. Calculating the Aggregate of the Adjustment Amounts

Under proposed § 301.6226–3(b), the aggregate of the adjustment amounts is the aggregate of the correction amounts determined under proposed § 301.6226–3(b). There are two correction amounts for these purposes—one for the partner's taxable year which includes the reviewed year of the partnership (first affected year) and a second correction amount for the partner's taxable years after the first affected year and before the reporting year (intervening years). These correction amounts cannot be less than zero, and any amount below zero after applying the rules in proposed § 301.6226–3(b) does not reduce any correction amount, any tax in the reporting year, or any other amount.

Under proposed § 301.6226–3(b)(2), the correction amount for the first affected year is the amount by which the reviewed year partner's chapter 1 tax would increase for the first affected year by taking into account the adjustments reflected in the statement provided to the reviewed year partner under proposed § 301.6226–2. The correction amount for the first affected year is calculated by first determining the amount of chapter 1 tax that would have been imposed for the first affected year if the items as adjusted in the statement had been correctly reported in the first affected year. From that amount is subtracted the sum of the amount of chapter 1 tax shown by the partner on the return for the first affected year (which includes amounts shown on an amended return for such year, including an amended return filed under section 6225(c)(2) by the reviewed year partner) plus any amounts not shown but previously assessed (or collected without assessment) less any rebates made (as defined in § 1.6664–2(e)). In other words, the correction amount is equal to A minus (B plus C minus D). A is the amount of chapter 1 tax that would have been imposed had the items as adjusted been properly reported on the return for the first affected year. B is the amount shown as chapter 1 tax on the return for the first affected year (including amended returns filed under section 6225(c)(2) by a reviewed year partner). C represents any amounts not so shown previously assessed (or collected without assessment). D is the amount of rebates made. For purposes of applying this definition, an amount previously assessed includes an amount that was previously assessed as a result of the partner taking into account adjustments under section 6226(b) pursuant to an election made by a partnership other than the partnership making the current election.

Under proposed § 301.6226–3(b)(3), the aggregate correction amount for all intervening years is the sum of the correction amounts for each intervening year. Determining the correction amount for each intervening year is a year-by-year determination. The correction amount for each intervening year is the amount by which the reviewed year partner's chapter 1 tax would increase by taking into account any adjustments to any tax attributes. The correction amount for each intervening year is calculated by determining the amount of chapter 1 tax that would have been imposed for the intervening year if any tax attribute for the intervening year had been adjusted after taking into account the partner's share of the adjustments for the first affected year (and if any tax attribute for the intervening year had been adjusted after taking into account any adjustments to tax attributes in any prior intervening year(s)). From that amount is subtracted the sum of the amount of chapter 1 tax shown by the partner on the return for the intervening year (which includes amounts shown on an amended return for such year, including an amended return filed under section 6225(c)(2) by the reviewed year partner) plus any amounts not shown but previously assessed (or collected without assessment) less any rebates made (as defined in § 1.6664–2(e)).

For instance, if a partner had a net operating loss on his original return for the first affected year that was carried forward into the intervening years, the net operating loss (a tax attribute as defined in proposed § 301.6241–1(a)(10)) in the first intervening year after the first affected year is reduced by any portion of the net operating loss utilized to offset the adjustments in the first affected year. This reduction may not only affect the first intervening year after the first affected year, but if not fully absorbed in that intervening year, it may have a cascading effect through the intervening years as the intervening years are adjusted to reflect the adjustment to the net operating loss carryforward.

A number of comments received in response to Notice 2016–23 suggested that the Treasury Department and the IRS should permit calculation of the additional reporting year tax to account for any decreases in chapter 1 tax that may have resulted in the first affected year or any intervening year after taking into account the partner's share of the partnership adjustments. However, section 6226(b) specifically describes the correction amounts as amounts by which a partner's chapter 1 tax would increase for each respective year. Section 6226(b)(2)(A) and (B). Accordingly, the proposed regulations reflect the statute and do not permit any decreases in chapter 1 tax that would result for the first affected year or for any intervening year to factor into the calculation of the additional reporting year tax.

ii. Election To Pay the Safe Harbor Amount

Under proposed § 301.6226–3(c), a partner that is furnished a statement described in proposed § 301.6226–2 may elect under this section to pay the safe harbor amount (or the interest safe harbor amount, in the case of certain individuals) shown on the statement in lieu of the additional reporting year tax. The election is made on the partner's return for the reporting year. If a partner is furnished multiple statements described in proposed § 301.6226–2, the partner may elect to pay the safe harbor amount from some or all of the statements. For instance, if the IRS examined two partnership taxable years in the same administrative proceeding, and an election under section 6226 was made with respect to all imputed underpayments for both years, the partnership would be required to furnish separate statements to its reviewed year partners and to calculate

separate safe harbor amounts for each year. A reviewed year partner could elect to pay the safe harbor amount for one taxable year, but not the other taxable year. If a partner elects to pay the safe harbor amount, the partner must report the safe harbor amount on the partner's timely-filed return (excluding extensions) for the partner's reporting year. If the partner fails to do so, the partner may not utilize the safe harbor amount, but instead must compute the additional reporting year tax under proposed § 301.6226–3(b) as if no election under proposed § 301.6226–3(c) had been made.

Proposed § 301.6226–2(g) provides rules for the partnership to compute the safe harbor amount and the interest safe harbor amount, which cannot be less than zero, for inclusion in the section 6226 statement furnished to each reviewed year partner and filed with the IRS. For purposes of calculating the safe harbor amount, all of the allocation rules of proposed § 301.6226–2(f) apply. Under proposed § 301.6226–2(g), the safe harbor amount for each reviewed year is calculated in the same manner as the imputed underpayment under proposed § 301.6225–1 except that the adjustments allocated to the partner on the statement (including any amounts attributable to adjustments to partnership tax attributes) are used instead of the adjustments that are taken into account for purposes of determining the imputed underpayment under proposed § 301.6225–1. With one exception, any approved modifications of the imputed underpayment, including a rate modification under section 6225(c)(4), has no effect on the determination of the safe harbor amount for any partner.

The one exception is where a reviewed year partner filed an amended return, or entered into a closing agreement, during the modification phase under section 6225(c)(2), and as a result, the imputed underpayment, to which an election under this section relates, was determined without regard to the adjustments taken into account on the amended return or in the closing agreement. In that case, such adjustments are not taken into account in determining that partner's safe harbor amount.

In addition to the safe harbor amount, a partnership must calculate an interest safe harbor amount for partners who are individuals and who have a calendar year taxable year. The interest safe harbor amount is calculated at the rate set forth in proposed § 301.6226–3(d)(4) from the due date (without extension) of the individual reviewed year partner's return for the first affected year until the due date (without extension) of the individual reviewed year partner's return for the reporting year.

A separate safe harbor amount (and interest safe harbor amount, if applicable) is calculated for each separate statement furnished to the partner under proposed § 301.6226–2. For example, if there are multiple reviewed years, the partner would receive a separate statement for each reviewed year, and there would be a separate safe harbor calculation and amount for each statement.

The purpose of the safe harbor amount (and the interest safe harbor amount) is to provide a simplified method for the reviewed year partner to take into account the reviewed year partner's share of the adjustments with respect to the partnership's reviewed year. Determining what the reviewed year partner's increase in chapter 1 tax would be in the partner's first affected year if the adjustments were taken into account in that year, the increase in chapter 1 tax that would have occurred as a result of any adjustment to the tax attributes for each intervening year, and interest due for the first affected year and each intervening year could be very complex. In addition, because the statute only permits adjustments to increase, but not decrease, chapter 1 tax for any taxable year, adjustments taken into account under section 6226(b) do not fully reflect the tax consequences of treating the items correctly in the reviewed year. While the safe harbor amount also does not reflect the tax consequences of treating the items correctly in the reviewed year any better than the method prescribed by the statute, it is a reasonable alternative to approximate the tax that would have been due. In some cases, many years may have lapsed between the first affected year and the last intervening year, further complicating the calculation. Accordingly, while determination of the aggregate of the correction amounts provides a close but imperfect approximation of the partner's tax that would have been due if the partnership return was correct in the reviewed year, some partners may decide that the complexity and cost of doing the calculations necessary to determine the aggregate of the correction amounts is not worth the effort given that the aggregate of the correction amounts may not be exactly what the tax due would have been if the partnership return was correct in the reviewed year.

Under the proposed regulations, the safe harbor amount is computed so that partners filing amended returns under section 6225(c)(2) or entering into closing agreements are not paying tax twice on the same adjustment. In addition, the safe harbor amount is determined by multiplying the net adjustments against the highest tax rate under section 6225(b)(1)(A). Use of a fixed rate rather than requiring the reviewed year partner to determine the rate in the first affected year and the intervening years allows the partnership to compute the safe harbor amount for the reviewed year partner, further reducing burden on the reviewed year partner.

The election under section 6226 is a partnership election and the partners are bound by the election. See section 6223(b); proposed § 301.6226–1(d). Although reviewed year partners can avoid the computation under section 6226(b) by filing an amended return (or entering into a closing agreement) and paying the tax and interest due in accordance with section 6225(c)(2) during the modification phase of the audit, not all partners are willing or able to amend their returns for the relevant year. Therefore, the Treasury Department and the IRS believe that it is important to allow partners an option to pay a simplified safe harbor amount in lieu of computing the correction amounts described under proposed § 301.6226–3(b) and a simplified interest safe harbor amount for certain individuals in lieu of computing the interest on the safe harbor amount under proposed § 301.6226–3(d)(2).

Any reviewed year partner may elect to pay the safe harbor amount, including reviewed year partners that are partnership-partners or S corporation partners.

iii. Interest

Reviewed year partners are also liable for interest on any correction amount for the first affected year and any intervening years under proposed § 301.6226–3(d)(1). If the partner elects to pay the safe harbor amount, a reviewed year partner that is an individual may also elect to pay the interest safe harbor amount. For all other partners and individuals that do not elect the safe harbor amount, interest applies under proposed § 301.6226–3(d)(2). Interest on the correction amounts and the safe harbor amount is determined at the partner level. Under proposed § 301.6226–3(d)(4), the rate of interest is calculated using the underpayment rate under section 6621(a)(2), except that when determining that rate, five percentage points are used instead of three percentage points, with the result that the underpayment rate for purposes of

section 6226 is the federal short-term rate plus five percentage points.

Under proposed § 301.6226–3(d)(1), a reviewed year partner is liable for interest on any correction amount from the first affected year and any intervening years from the due date of the return (without extension) for the applicable tax year (that is, the year to which the additional tax is attributable) until the correction amount is paid. For purposes of calculating interest, the safe harbor amount and any penalties, additions to tax, or additional amounts are attributable to adjustments taken into account for the first affected year. Therefore, proposed § 301.6226–3(d)(2) and (3) provide that the reviewed year partner is liable for interest on the safe harbor amount and any penalties, additions to tax, or additional amounts from the due date of the return for the corresponding first affected year (without extension) until the reviewed year partner pays such amounts.

D. Qualified Investment Entities (QIEs): Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs)

The proposed regulations under section 6226 coordinate the rules under the centralized partnership audit regime with the deficiency dividend procedures under section 860 for partners that are RICs and REITs. In general, section 860 allows RICs and REITs to be relieved from the payment of a deficiency in (or to receive a credit or refund of) certain taxes including, among certain others, taxes imposed by sections 852(b)(1) and (3), 857(b)(1) or (3), and, if the entity fails the distribution requirements of section 852(a)(1)(A) or 857(a)(1), as applicable, the corporate income tax imposed by section 11(a) or 1201(a). The procedure provided by section 860 is to allow an additional deduction for ''deficiency dividends'' within the meaning of section 860(f) that meets the requirements of section 860 in computing the deduction for dividends paid for the taxable year for which a ''determination'' within the meaning of section 860(e) is made. Under proposed § 301.6226–2(h), if a statement described in proposed § 301.6226–2 is furnished to a reviewed year partner that is a RIC or REIT, the RIC or REIT may take into account the adjustments reflected in the statement that also are ''adjustments'' within the meaning of section 860(d) by using the deficiency dividend procedures set forth in section 860, subject to the limitations described in proposed § 301.6226–3(b)(4). Accordingly, a REIT or a RIC may utilize the deficiency dividend procedures under section 860 if the REIT or RIC receives a statement from a partnership under proposed § 301.6226–2 that includes adjustments within the meaning of section 860(d).

Section 301.6226–3(b)(4) of the proposed regulations coordinates rules for the deficiency dividend procedures set forth in section 860 with the rules for determining the additional reporting year tax under § 301.6226–3(b) with respect to any adjustments shown on a statement furnished to a RIC or REIT under proposed § 301.6226–2. Under these rules, if the statement described in proposed § 301.6226–2 results in any adjustment (within the meaning of section 860(d)) to a RIC or REIT for the first affected year or any intervening year, the RIC or REIT may make a determination under section 860(e)(4) and Rev. Proc. 2009–28, 2009–1 C.B. 1011, and avail itself of the deficiency dividend procedures set forth in section 860 and the regulations thereunder. If the RIC or REIT utilizes the deficiency dividend procedures with respect to adjustments in a statement described in proposed § 301.6226–2, the RIC or REIT may claim a deduction for deficiency dividends against the adjustments furnished to the RIC or REIT (to the extent they qualify as adjustments under section 860(d)) in calculating any correction amounts for the first affected year and any intervening year to the extent that the RIC or REIT makes deficiency dividend distributions under section 860(f) and complies with all requirements of section 860 and the regulations thereunder.

Also, if a RIC or REIT claims a deficiency dividends deduction, interest under proposed § 301.6226–3(d) is only calculated on any correction amount determined after deducting any deficiency dividend deduction from the adjustments taken into account by the RIC or REIT. Nothing in proposed § 301.6226–3(b)(4) affects a RIC's or REIT's liability for any interest on the deficiency dividend distribution under section 860(c)(1). Therefore, a RIC or a REIT will be liable for interest under section 860(c)(1) as to any deficiency dividend distribution as well as interest on any correction amount as determined under proposed § 301.6226–3(d). Because the deficiency dividend distribution is deductible in calculating the correction amounts, in no event will a RIC or REIT pay both interest under section 860(c)(1) and section 6226 as to the same amount.

Finally, as clarified in proposed § 301.6226–3(b)(4), a deficiency dividend deduction used in calculating any correction amount has no effect on a RIC or REIT's liability for any penalties reflected in the statement furnished to the RIC or REIT under proposed § 301.6226–2.

E. Foreign Partners and Certain U.S. Partners

The proposed regulations reserve on rules that would apply when statements described in proposed § 301.6226–2 are provided to foreign partners, including foreign entities, or certain domestic partners. In general, certain amounts received by a partnership that are allocable to a foreign partner may be subject to withholding under chapter 3 of subtitle A of the Code (chapter 3), and certain amounts allocable to a foreign or domestic partner may be subject to withholding under chapter 4 of subtitle A of the Code (chapter 4). To the extent that amounts are withheld by the partnership or other withholding agent under chapter 3 or 4, and remitted to the IRS, such amounts are creditable by the foreign partner or domestic partner to offset the chapter 1 tax that the partner otherwise would owe in the absence of the withholding. The purpose of chapter 3 withholding is to ensure compliance by foreign persons with respect to income subject to tax under chapter 1, by requiring the partnership (or other withholding agent) to withhold and remit the tax that would normally be paid by the foreign person on payments or income allocated to the foreign person. The purpose of chapter 4 withholding is to ensure that information reporting about U.S. persons that use certain offshore financial accounts or passive foreign entities is available to the IRS to enhance tax compliance. The withholding imposed under chapter 4 may be imposed on certain foreign financial institutions, account holders of a financial account, or passive non-financial foreign entities with substantial U.S. owners, to incentivize the information required under chapter 4 to be reported and available to the IRS.

It is the view of the Treasury Department and the IRS that, consistent with the purposes of chapters 3 and 4, if adjustments in a statement described in proposed § 301.6226–2 represent additional income allocable to a foreign or domestic partner that was not accounted for in the reviewed year, and the partnership elects under section 6226 to have the partners take into account the adjustments, such income should be subject to the rules in chapters 3 and 4 in the adjustment year to the same extent that such amounts would have been if they had been properly accounted for by the partnership in the reviewed year. Accordingly, the Treasury Department

and the IRS intend to issue regulations that coordinate the application of the rules under chapters 3 and 4 to income allocable to a foreign partner or domestic partner where a partnership elects the application of section 6226. Comments are requested on how to efficiently coordinate the election under section 6226 with the withholding rules under chapters 3 and 4, while taking into account the objectives and purposes of BBA to improve the IRS's ability to effectively audit partnerships. In particular, the Treasury Department and the IRS request comments on: (1) How the partnership should satisfy its reporting obligations under chapters 3 and 4 in the reporting year with respect to income allocable to a foreign partner or domestic partner; (2) whether the partnership should be required to obtain new documentation from partners to support a lower withholding rate or whether the partnership should be able to rely on documentation obtained with respect to the reviewed year; and (3) how the rules under chapters 3 and 4 should apply when a statement described in proposed § 301.6226–2 includes additional income allocable to a foreign partner that is an intermediary or flow-through entity.

Additionally, the Treasury Department and the IRS also intend to issue regulations to address situations where a direct partner in the partnership is a foreign entity, such as a trust or corporation, that may not be liable for U.S. federal income tax with respect to one or more adjustments, but an owner of the direct partner is, or could be liable for tax with respect to such amount. For example, if a direct partner in the audited partnership is a controlled foreign corporation, the foreign corporation as a direct partner may not have a U.S. tax liability with respect to a given adjustment; however, the adjustment may impact the tax liability of its U.S. shareholder(s). The tax effects on the U.S. shareholder(s) may arise in the adjustment year, an intervening year, or some subsequent year, depending on the specific facts and circumstances. Comments are requested on how the reporting obligations concerning foreign entities should be modified to ensure that statements issued under section 6226 are timely reflected on the returns of the U.S. owners of such entities.

F. Section 6226 Election and Section 6234 Petition for Readjustment

Section 6226(a) provides that the election under that section must be made within 45 days of the date the FPA is mailed. Section 6234(a) provides that the partnership may petition for readjustment within 90 days of the date the FPA is mailed. The proposed regulations coordinate these rules so that an election can be made during the time frame provided under section 6226 without cutting off the partnership's right to challenge the adjustments in court within the time frame provided for in section 6234.

As clarified under proposed § 301.6226–1(e), an election under proposed § 301.6226–1 does not affect the partnership's ability to file a petition under section 6234 to challenge adjustments determined in an FPA. The proposed regulations do this by providing that while the election under section 6226 must be filed within 45 days of the date the FPA is mailed, the filing and furnishing of the statements, is not required until 60 days after the adjustments are finally determined. Proposed § 301.6226–2(b). Under proposed § 301.6226–2(b), the partnership adjustments become finally determined upon the later of the expiration of the time to file a petition under section 6234 or, if a petition is filed under section 6234, the date when the court's decision becomes final. Accordingly, a partnership can make an election under section 6226, petition for readjustment, and then file and furnish statements once the adjustments are finally determined. If, after going to court, a partnership that filed the election within the 45-day period determines that it no longer wishes to have section 6226 apply, the partnership can request IRS consent to revoke the election.

G. Pass-Through Partners

A number of comments received in response to Notice 2016–23 suggested that a pass-through partner who receives a statement described in proposed § 301.6226–2 should be able to flow through the adjustments to its owners instead of paying tax on the adjustments at the first tier. Under this approach, the adjustments would flow through the tiers until a partner that is not a pass-through partner receives the adjustment. The proposed regulations reserve on this issue.

Under section 6226(a)(2), if a partnership elects the alternative to the payment of the imputed underpayment, the partnership is required to furnish statements to ''each partner of the partnership for the reviewed year.'' Under section 6226(b), a reviewed year partner's tax imposed by chapter 1 for the reporting year is increased by the aggregate of the correction amounts for the first affected year and any intervening years. Section 7701(a)(2) defines ''partner'' as a member in a partnership (that is, a direct partner). Accordingly, if a partnership makes an election under section 6226, section 6226(b) requires the partnership's direct partners from the reviewed year to take into account the adjustments. Neither section 7701(a)(2) nor section 6226 makes any distinction in this respect between those direct partners that are themselves pass-through entities, and direct partners that are not pass-through entities, such as individuals and C corporations.

Section 6226 is prescriptive regarding the election to push out the partnership adjustments resulting from a centralized partnership audit proceeding rather than paying the imputed underpayment. First, the partnership subject to the proceeding must make the election no later than 45 days after the FPA is mailed to the partnership, and the partnership must furnish and file statements reflecting the reviewed year partners' shares of the adjustments. Section 6226(a)(1) and (2). Second, section 6226(b) provides that each direct partner's chapter 1 tax for the taxable year including the date the statement is furnished (reporting year) is increased by an amount that represents the tax that should have been paid by the partner if in the reviewed year the items adjusted were correctly reported on the partnership's return and taken into account by the direct partner.

In the case of a partnership that is itself a partner, the General Explanation of Tax Legislation Enacted for 2015 (Bluebook) explained that the partnership-partner ''pays the tax attributable to adjustments with respect to the [first affected year] and the intervening years, calculated as if it were an individual . . . for the taxable year . . . .'' JCS–1–16 at 70. To account for the fact that partnerships are not liable for chapter 1 tax, the Bluebook provides that, ''a partnership that receives a statement from the audited partnership is treated similarly to an individual who receives a statement from the audited partnership.'' *Id.* (omitting footnote providing ''[s]ection 703, which states that 'the taxable income of a partnership shall be computed in the same manner as in the case of an individual . . . .' '). In consideration of the fact that direct partnership-partners must pay the tax, the Bluebook further states that the audited partnership, the partnership receiving the statement under section 6226, and that partnership's partners ''may have entered into indemnification agreements under the partnership agreement with respect to the risk of tax liability of reviewed year partners being borne economically by partners in the

year that includes the date of the statement. Because the payment of tax by a partnership under the centralized system is nondeductible, payments under an indemnification or similar agreement with respect to the tax are nondeductible.'' *Id.*

In December 2016, both the House of Representatives and the Senate introduced bipartisan technical corrections that would resolve this issue by providing that a partner that is a partnership or S corporation may elect to either pay an imputed underpayment under rules similar to section 6225 or flow the adjustments through the tiers. See Tax Technical Corrections Act of 2016 (H.R. 6439, 114th Cong. (2016)); Tax Technical Corrections Act of 2016 (S. 3506, 114th Cong. (2016)).

The Technical Corrections Act's approach to allow a partnership or S corporation to flow adjustments through the tiers presents significant administrative concerns. First and foremost, allowing such entities to flow through the tiers will result in complexities, challenges, and inefficiencies similar to what occurred under TEFRA. Under TEFRA, following the conclusion of an administrative or judicial proceeding, the IRS was expected to work through the various tiers and calculate, assess, and collect the tax at the ultimate partner level. Allowing partners under BBA to flow adjustments through the tiers presents similar, if not greater, burdens since multiple returns are implicated, from the reviewed year through the adjustment year and all intervening years, in verifying, assessing and collecting the tax, interest and penalties. The IRS would have to undertake this labor intensive process of tracking, validating, and reconciling adjustments and payments through countless tiers. Indeed, as the GAO noted in its most recent report on large partnerships and TEFRA, almost two-thirds of large partnerships in 2011 had more than 1,000 direct and indirect partners, and hundreds of large partnerships had more than 100,000 direct and indirect partners.

Another significant concern is that BBA presents a bifurcated process where the tax is determined and later assessed and collected through a self-reporting process by the partners. The process of flowing adjustments to the reviewed year partners occurs after the audit/litigation is concluded. The assessment process under BBA, whereby the partners are required to calculate the tax, interest, and penalties and report them on their next filed return, presents a challenge because of the passage of time. Even compliant taxpayers, who receive statements in the middle of the tax year may not understand their significance, and may not know exactly how to utilize this information. This would necessitate additional compliance resources by the IRS to check the adjustment year reporting to verify that the adjustments were indeed correctly reported by every tier and by all direct and indirect partners.

The costs involved in administering these processes will limit the overall number of audits that can be undertaken, which in turn will limit the IRS's ability to meaningfully address tax noncompliance for this segment of taxpayers, as well as limit the overall revenue collection from these entities, including, for example, as partners die, dissolve, become insolvent, or are not able to be located due to the passage of time.

In light of these administrative concerns and the need for public comment on more immediately relevant aspects of these regulations, the proposed regulations reserve this issue. See proposed § 301.6226–2(e). However, the Treasury Department and the IRS are considering an approach under section 6226 for tiered partnerships for pushing the adjustments beyond the first tier partners that will be the subject of other proposed regulations to be published in the near future. The Treasury Department and the IRS seek comments on how the IRS might administer the requirements of section 6226 in tiered structures, including comments on the information tracking and other information sharing from the partnership under examination with respect to its direct and indirect partners to the IRS that are necessary for the IRS to monitor whether adjustments are properly flowed through the tiers and to determine that the proper taxpayers take into account the correct amount of adjustments and report the correct amount of any resulting tax, interest, and penalties. The Treasury Department and the IRS are also specifically interested in comments on reducing noncompliance and collection risk in tiered structures, while at the same time limiting the administrative costs of the IRS.

In addition, the Treasury Department and the IRS are interested in comments as to how to treat under section 6226 a direct partner in the partnership that is an estate or trust, or a foreign entity, such as a trust or corporation that may not be liable for U.S. federal income tax with respect to one or more adjustments, but an owner of the direct partner is, or could be, liable for tax with respect to such amount. For instance, if a direct partner in the audited partnership is a controlled foreign corporation, the foreign corporation as a direct partner may not have a U.S. tax liability with respect to a given adjustment; however, the adjustment may impact the tax liability of its U.S. shareholder(s). The tax effects on the U.S. shareholder(s) may arise in the first affected year, an intervening year, or some subsequent year, depending on the specific facts and circumstances. The Treasury Department and the IRS request comments on how the safe harbor amount should be computed with respect to such foreign partners.

H. Adjustments to Partners' Outside Bases and Capital Accounts and a Partnership's Basis and Book Value in Property

As discussed previously in this preamble, section 6226(b)(3) requires that any tax attribute which would have been affected if the partnership adjustments were taken into account for the reviewed year, be appropriately adjusted for purposes of computing the amount by which the tax imposed under chapter 1 would increase for any intervening year. As with section 6225, however, section 6226 does not explicitly provide that tax attributes affected by reason of a partnership adjustment should be adjusted for all purposes, and not just for purposes of taking the adjustments into account to calculate the additional reporting year tax, and that the adjustments to tax those attributes should continue to have effect after the adjustment year.

As in the case of a partnership that did not elect the application of section 6226 with respect to an imputed underpayment, the Treasury Department and the IRS have determined that it is appropriate to adjust the adjustment year partners' outside bases and capital accounts and a partnership's basis and book value in property when one of those tax attributes is affected by reason of a partnership adjustment. However, given that the tax imposed under section 6226 includes the amount by which the tax imposed under chapter 1 would increase for any intervening year, a different approach is appropriate.

The purpose of the partnership adjustments is to create a new, accurate starting point for later taxable years; therefore, it is necessary to adjust the adjustment year partners' outside bases and capital accounts despite the fact that it is the reviewed year partners who pay additional tax under section 6226. Providing mechanical rules to govern the adjustments to adjustment year

partners' outside bases and capital accounts and a partnership's basis and book value in property raise a myriad of technical issues on which the Treasury Department and the IRS request comments. As a result, the proposed regulations reserve a place for rules regarding adjustments to a partner's outside basis or capital account and a partnership's basis or book value in property when a partnership elects the application of section 6226 with respect to an imputed underpayment.

The Treasury Department and the IRS have determined that, in the adjustment year, adjustment year partners' outside bases and capital accounts and a partnership's basis and book value in property should be adjusted to what they would have been if the adjustments were made in the reviewed year to reviewed year partners and property and then modified to take into account all intervening events considered in computing the amount by which the tax imposed under chapter 1 would increase for any intervening year—for example, amortization or depreciation of property. In some cases, the reviewed year partner may not be an adjustment year partner, or the partnership might, in an intervening year, have disposed of property to which an adjustment relates. Accordingly, rules will also need to provide how adjustments to adjustment year partners' outside bases and capital accounts and a partnership's basis and book value in property are made when there have been: (1) Sales of property, (2) distributions of property to partners, (3) contributions of property to corporations or lower-tier partnerships, (4) other nonrecognition transfers of property, (5) sales of partnership interests, (6) transfers of partnership interests in nonrecognition transactions, and (7) contributions to the partnership. In addition, the Treasury Department and the IRS are considering whether partnerships should be required to recompute basis adjustments under sections 734 and 743 that resulted from distributions or transfers in intervening years to take into account adjustments to partners' outside bases and a partnership's basis in property. The Treasury Department and the IRS are also considering whether and how an adjustment should be made to the basis of property distributed in an intervening year when an adjustment to the partnership's basis in that property or an adjustment to the recipient partner's outside basis would otherwise have been appropriate.

It seems appropriate that any outside basis and capital account adjustments that need to be made are made with respect to the adjustment year partners who are the reviewed year partners who received a statement of the partner's share of any adjustment to income, gain, loss, deduction or credit. The Treasury Department and the IRS believe that if a reviewed year partner transfers its partnership interest in an intervening year, it is appropriate for the transferee adjustment year partner's capital account and outside basis to be adjusted in the adjustment year. Whether the interest was transferred in a recognition transaction or a nonrecognition transaction, however, is relevant to the amount of the adjustment to the transferee's outside basis, but not capital account, because the transferee in either case succeeds to the capital account of the transferor, however, in a recognition transaction, the transferee would have taken a cost basis in the interest upon a transfer in which gain was recognized. The Treasury Department and the IRS request comments regarding whether and how to adjust the outside bases and capital accounts of adjustment year partners if the reviewed year partner whose basis and capital account should have been adjusted is no longer a partner as a result of a liquidating distribution and thus no other partner has succeeded to the liquidating partner's capital account.

Finally, comments are requested on how, or if, these regulations should address partnerships that do not maintain capital accounts.

7. Administrative Adjustment Requests

A. Procedures for Filing an Administrative Adjustment Request

Proposed § 301.6227–1(a) describes the general rules for filing an administrative adjustment request (AAR). In accordance with section 6227(a), proposed § 301.6227–1(a) provides that a partnership may file an AAR with respect to one or more items of income, gain, loss, deduction, or credit of the partnership and any partner's distributive share thereof for any partnership taxable year as determined under section 6221 and the regulations thereunder. Proposed § 301.6227–1(a) requires a partnership to determine whether the adjustments requested in the AAR result in an imputed underpayment in accordance with proposed § 301.6227–2(a) for the reviewed year, that is, the taxable year to which the adjustments relate (see proposed § 301.6241–1(a)(8)). If the requested adjustments result in an imputed underpayment, proposed § 301.6227–1(a) provides that the partnership takes the adjustments into account under proposed § 301.6227–2(b), which requires the partnership to pay the imputed underpayment unless the partnership makes an election under proposed § 301.6227–2(c). If the partnership makes an election under proposed § 301.6227–2(c), the reviewed year partners take the adjustments into account in accordance with proposed § 301.6227–3, which provides rules similar to section 6226. Under proposed § 301.6227–1(a), if the adjustments do not result in an imputed underpayment, the reviewed year partners must take the adjustments into account under the rules of proposed § 301.6227–3.

Proposed § 301.6227–1(a) clarifies that only a partnership may file an AAR and that a partner may not file an AAR unless the partner is doing so in his or her capacity as partnership representative for the partnership. Additionally, in certain cases, a partner that is itself a partnership subject to subchapter C of chapter 63 (that is, the partnership has not elected out of the centralized partnership regime under section 6221(b)) may file an AAR in response to the filing of an AAR by the partnership of which it is a partner. See proposed § 301.6227–3(c) for the rules regarding certain partnership-partners filing AARs. In addition, proposed § 301.6227–1(a) clarifies that a partnership may not file an AAR solely to provide the partnership an opportunity to change a designation of the partnership representative.

Proposed § 301.6227–1(b) provides that an AAR may only be filed by a partnership with respect to any partnership taxable year for which a partnership return has been filed. In general, a partnership may not file an AAR with respect to a partnership taxable year more than three years after the later of the date the partnership return for such partnership taxable year was filed or the last day for filing such partnership return determined without regard to extensions. In addition, the proposed regulations provide that an AAR may not be filed with respect to a partnership taxable year after a notice of administrative proceeding with respect to such taxable year has been mailed by the IRS under section 6231.

The proposed regulations reserve on rules to coordinate the rules under section 6227 with the requirements in section 905(c) when the AAR includes an adjustment to the amount of creditable foreign tax incurred by the partnership. Comments are requested on how a partnership can fulfill the requirements of section 905(c), including those rules relating to the assessment and collection of interest on certain refunds of creditable foreign taxes, while taking into account the objectives and purposes of the

centralized partnership audit regime to improve the IRS's ability to effectively audit partnerships.

Proposed § 301.6227–1(c)(1) provides that an AAR must be filed in accordance with the forms, instructions, and other guidance prescribed by the IRS and must include any required statements, forms, and schedules. An AAR must be signed under penalties of perjury by the partnership representative. This requirement is consistent with section 6223 which states that the partnership representative has the sole authority to act on behalf of the partnership under subchapter C of chapter 63. See proposed § 301.6223–2.

Under proposed § 301.6227–1(c)(2), a valid AAR must include the adjustments requested; any required statements described in proposed § 301.6227–1(e), including any transmittal with respect to such statements as prescribed in forms, instructions, and other guidance; and any other information prescribed by the IRS in forms, instructions, or other guidance. Proposed § 301.6227–1(d) provides that where reviewed year partners are required to take into account adjustments requested in an AAR, the partnership must furnish a copy of the statement filed with the IRS to the reviewed year partner to whom the statement relates. If the partnership mails the statement, it must be mailed to the current or last address of the reviewed year partner that is known to the partnership. The copy of the statement must be furnished to the reviewed year partner on the date the partnership files the AAR with the IRS.

Proposed § 301.6227–1(c) describes the statements that must be issued to reviewed year partners in the case of an election under proposed § 301.6227–2(c) or an AAR not resulting in an imputed underpayment under proposed § 301.6227–2(d). Each statement must include the name and correct TIN of the reviewed year partner; the current or last address of the partner that is known to the partnership; the reviewed year partner's share of items originally reported to the partner (taking into account any adjustments made pursuant to a prior AAR filed under section 6227); the reviewed year partner's share of the adjustments requested in the AAR (as described in proposed § 301.6227–1(c)(2)); the date the statement is furnished to the partner; the partnership taxable year to which the adjustments relate (the reviewed year); and any other information required by the forms, instructions, or other guidance prescribed by the IRS. Proposed § 301.6227–1(e).

Proposed § 301.6227–1(e)(2) describes the reviewed year partners' share of the adjustments requested in an AAR for purposes of the statements described in proposed § 301.6227–1(e)(1). Under proposed § 301.6227–1(e)(2), except when a specific partner's share of an item is reflected on an AAR in a specific manner in accordance with the provisions of the partnership agreement and in accordance with the principles of section 704(b), each reviewed year partner's share of an adjustment must be determined and reported to the reviewed year partner in the same manner as the item to which the adjustment relates was originally determined and reported on the partnership return for the reviewed year. If the item to which the adjustment relates was not reflected on the partnership's reviewed year return, the reviewed year partners' respective shares of the adjustment must be determined and reported to the reviewed year partners in accordance with the manner in which the allocation of the items to which the adjustment relates would have been made under the partnership agreement and subject to the principles of section 704(b) in the reviewed year. If the adjustments, as requested in the AAR, allocate items to a specific partner or in a specific manner, the statement must reflect the adjustment as allocated in accordance with the AAR.

Proposed § 301.6227–1(f) provides that the filing of an AAR under proposed § 301.6227–1(b) and the filing and furnishing of statements as described in proposed § 301.6227–1(c) and proposed § 301.6227–1(d) are actions taken by the partnership under section 6223 and the regulations thereunder. Section 6223 states that a partnership and all partners of such partnership shall be bound by actions taken by the partnership under subchapter C of chapter 63. Accordingly, proposed § 301.6227–1(f) provides that, unless otherwise determined by the IRS, a partner's share of the adjustments requested in an AAR as reflected on a statement described in proposed § 301.6227–1(e) are binding on the partner. Under proposed § 301.6227–1(f), a partner must treat the adjustments on the partner's return consistently with how the adjustments are treated on the statement that the partnership files with the IRS. See proposed § 301.6222–1(c)(2) (regarding items the treatment of which a partner is bound to under section 6223).

Proposed § 301.6227–1(g) provides that the IRS may, within the period provided under section 6235, conduct a proceeding with respect to the partnership for the taxable year to which the AAR relates and adjust items subject to subchapter C of chapter 63, including the items adjusted in the AAR. In the case of an AAR, the Service may make adjustments with respect to the partnership taxable year to which the AAR pertains within three years from the date the AAR is filed. Proposed § 301.6227–1(g) provides that the IRS may re-determine adjustments requested in an AAR, including modifications applied by the partnership to the imputed underpayment. If the partnership adjustments determined by the IRS increase any imputed underpayment, the additional amount is assessed in the same manner and subject to the same restrictions as any other imputed underpayment. See section 6232.

B. Adjustments Requested in an AAR Taken Into Account by the Partnership

Proposed § 301.6227–2 describes how adjustments requested in an AAR are determined and taken into account by a partnership. Proposed § 301.6227–2(a)(1) provides the rules for determining whether an imputed underpayment results from adjustments requested in an AAR by referring to the proposed § 301.6225–1.

Under proposed § 301.6227–2(a)(2), in the case of an AAR, a partnership may reduce the imputed underpayment as a result of certain modifications permitted under proposed § 301.6225–2. Those modifications are modifications that relate to tax-exempt partners, rate modification, modification related to certain passive losses of publicly traded partnerships, modification applicable to qualified investment entities described in section 860, and other modifications to the extent permitted under future IRS guidance. The modifications described in proposed § 301.6227–2 are the only modifications a partnership can use in an AAR context. Other types of modification, such as modifications under proposed § 301.6225–2 with respect to amended returns and closing agreements are not available in the case of an AAR.

In addition, proposed § 301.6227–2(a)(2)(i) provides that a partnership does not need to seek IRS approval prior to modifying an imputed underpayment that results from adjustments requested in an AAR. However, proposed § 301.6227–2(a)(2)(ii) provides that modifications to the imputed underpayment resulting from adjustments requested in an AAR can be taken into account by the partnership only if the AAR that is filed includes notification to the IRS of the modification, a description of the effect

of the modification on the imputed underpayment, an explanation of the basis for such modification, and all necessary documentation to support the partnership's entitlement to such modification. These rules differ from the modification procedures under section 6225, where the imputed underpayment is not modified prior to approval by the IRS.

C. Adjustments Resulting in an Imputed Underpayment

i. Partnership Pays the Imputed Underpayment

Proposed § 301.6227–2(b)(1) provides that when the adjustments requested in an AAR result in an imputed underpayment, the partnership must pay the imputed underpayment (as reduced by modifications meeting the requirements of proposed § 301.6227–2(a)(2)(ii)) at the time the partnership files the AAR, unless the partnership makes the election under proposed § 301.6227–2(c) to have its reviewed year partners take such adjustments into account. The partnership's payment of the imputed underpayment is treated as a nondeductible expenditure under section 705(a)(2)(B) in accordance with proposed § 301.6241–4.

Proposed § 301.6227–2(b)(2) provides the rules for determining penalties and interest with respect to an imputed underpayment resulting from adjustments requested in the AAR. As provided in proposed § 301.6227–2(b)(2), the IRS may impose any penalty, addition to tax, and additional amount with respect to such an imputed underpayment in accordance with section 6233(a)(3). In the case of any failure to pay an imputed underpayment at the time an AAR is filed, the IRS may impose any penalty, addition to tax, and additional amount in accordance with section 6233(b)(3). Interest on an imputed underpayment is determined under chapter 67 for the period beginning on the date after the due date of the partnership return for the reviewed year (determined without regard to extension) and ending on the earlier of the date payment of the imputed underpayment is made with the AAR, or the due date of the partnership return for the adjustment year. See section 6233(a)(2). In the case of any failure to pay an imputed underpayment before the due date of the partnership return for the adjustment year, any interest is determined in accordance with section 6233(b)(2).

The Treasury Department and the IRS intend in future guidance to cross reference proposed § 301.6225–4 for rules regarding adjustments to partners' outside bases and capital accounts and a partnership's basis and book value in property when the adjustments requested in an AAR result in an imputed underpayment and the partnership does not elect under proposed § 301.6227–2(c) to have its reviewed year partners take such adjustments into account.

ii. Election To Have the Reviewed Year Partners Take the Adjustments Into Account

Proposed § 301.6227–2(c) provides that a partnership may elect to have its reviewed year partners take into account adjustments requested in an AAR that result in an imputed underpayment in lieu of the partnership paying that imputed underpayment. If the partnership makes a valid election under proposed § 301.6227–2(c), the partnership is no longer required to pay the imputed underpayment resulting from the adjustments requested in the AAR. Rather, each reviewed year partner must take into account its share of such adjustments in accordance with proposed § 301.6227–3. For these purposes, any modification requested under proposed § 301.6227–2(a)(2) is disregarded, and all adjustments requested in the AAR are taken into account by each reviewed year partner in accordance with proposed § 301.6227–3.

D. Adjustments Requested in an AAR Not Resulting in an Imputed Underpayment

When the adjustments requested in an AAR do not result in an imputed underpayment, the reviewed year partners must take into account their shares of such adjustments in accordance with proposed § 301.6227–3. Proposed § 301.6227–2(d) provides that in that situation the partnership must furnish statements to the reviewed year partners and file a copy of those statements with the IRS in accordance with proposed § 301.6227–1.

E. Rules for Reviewed Year Partners To Take Adjustments Into Account

Reviewed year partners take adjustments requested in an AAR filed by the partnership into account in two circumstances: (1) The adjustments requested in the AAR result in an imputed underpayment and the partnership elects under proposed § 301.6227–2(c) to have its reviewed year partners take the adjustments into account, or (2) the adjustments requested in the AAR do not result in an imputed underpayment as described in § 301.6227–2(d). Proposed § 301.6227–3 describes how reviewed year partners take into account adjustments requested in an AAR.

i. Rules Under Section 6226 Apply With Certain Changes

Generally, under proposed § 301.6227–3, a reviewed year partner who receives a statement described in proposed § 301.6227–1(e) must treat that statement as if it were provided under section 6226(a)(2). Under proposed § 301.6227–3(b), the reviewed year partner must pay any amount of tax, penalties, additions to tax, additional amounts, and interest that results from taking into account such adjustments in accordance with proposed § 301.6226–3, except that, the rules under proposed § 301.6226–3(c) (allowing the reviewed year partner to elect to pay a safe harbor amount), proposed § 301.6226–3(d)(2) (regarding interest on the safe harbor amount), and proposed § 301.6226–3(d)(4) (regarding the increased rate of interest) do not apply. Comments are requested regarding whether the election to pay a safe harbor amount under proposed § 301.6226–3(c) should be available in the case of a partner that must take into account adjustments requested in an AAR under proposed § 301.6227–3.

Furthermore, proposed § 301.6227–3(b)(1) provides that the restriction in proposed § 301.6226–3(b)(1) that the correction amount for the first affected year and any intervening year cannot be less than zero does not apply in the case of taking into account adjustments requested by the partnership in an AAR. The reason for this is two-fold. First, unlike an adjustment request under section 6227, which is a voluntary request for adjustment initiated by the partnership, the rules under sections 6225 and 6226 are designed to address adjustments that are determined by the IRS after it initiated a proceeding with respect to of the partnership. In cases where the partnership is requesting adjustments that will reduce a partner's tax liability, such adjustment request mirrors the voluntary compliance of a partnership self-reporting amounts on its original return, which may include losses resulting in refunds for partners. For this reason, partners taking adjustments into account should similarly be able to claim refunds when applicable. In cases where adjustments in an AAR would increase tax due, such voluntary compliance by partnerships should be encouraged and only allowing unfavorable effects from such adjustments would discourage partnership voluntary compliance.

Second, section 6226(b)(2) specifically provides that only increases in tax are taken into account by the

reviewed year partners. In contrast, section 6227 does not similarly limit adjustments taken into account by the reviewed year partners; although section 6227 explicitly provides that adjustments requested in an AAR that do not result in an imputed underpayment may only be taken into account by the reviewed year partners under rules similar to the rules of 6226 with appropriate adjustments to those rules. The lack of a specific restriction in section 6227 on taking into account decreases to tax in the first affected year and intervening years, combined with section 6227's requirement that adjustments that do not result in an imputed underpayment must be taken into account by the reviewed year partners (the partners who originally overpaid tax due) indicates that in the AAR context both favorable and unfavorable adjustments should be given effect when taken into account by the reviewed year partners. Therefore, it is appropriate in the AAR context to remove the restriction in proposed § 301.6226–3(b)(1) that the correction amount for the first affected year and any intervening year as described in that section cannot be less than zero.

Proposed § 301.6227–3(b)(2) allows the reviewed year partner to claim a refund where the partnership incorrectly allocated items from the partnership in the reviewed year and provides that when a partner (other than a pass-through partner) takes into account adjustments requested in an AAR, and those adjustments result in a decrease in tax, the partner may use that decrease to reduce the partner's chapter 1 tax for the taxable year which includes the date the statement was furnished to the partner (reporting year), and may make a claim for refund of any overpayment that results. The reduction is treated in a manner similar to a refundable credit under section 6401(b). Nothing under the proposed rules, however, will entitle a pass-through partner to a refund to which the pass-through partner would not otherwise be entitled under the Code. Proposed § 301.6227–3(b)(3) provide examples to illustrate the operation of these rules.

The Treasury Department and the IRS intend in future guidance to cross reference proposed § 301.6226–4 for rules regarding adjustments to partners' outside bases and capital accounts and a partnership's basis and book value in property when reviewed year partners take adjustments requested in an AAR filed by the partnership into account.

ii. Pass-Through Partners

Proposed § 301.6227–3(c) is reserved to provide rules for pass-through partners (as defined in proposed § 301.6241–1(a)(5)) to take into account adjustments requested in an AAR. Section 6227 provides that adjustments requested in an AAR that result in an imputed underpayment may be taken into account by the partnership and partners under rules similar to the rules of section 6226. In the case of an adjustment that does not result in an imputed underpayment, rules similar to the rules of section 6226 shall apply with appropriate adjustments. Rules under section 6226 pertaining to pass-through partners have been reserved under proposed § 301.6226–3(e). Accordingly, the proposed regulations under section 6227 also reserve on rules with respect to pass-through partners until the rules under section 6226 regarding such partners are established.

8. Definitions and Special Rules

A. Terms Defining Partnership Years and Types of Partners

Proposed § 301.6241–1(a) contains definitions for purposes of subchapter C of chapter 63 and these proposed regulations. Proposed § 301.6241–1(a)(8) defines the term ''reviewed year'' to mean the partnership taxable year to which the adjustments relate. Proposed § 301.6241–1(a)(9) defines the term ''reviewed year partner'' to mean any person who held an interest in a partnership at any time during the reviewed year. Proposed § 301.6241–1(a)(1) defines the term ''adjustment year'' to mean the partnership taxable year in which a decision of a court becomes final (if a petition is filed under section 6234), an AAR is made, or, in any other case, when an FPA is mailed (or if the partnership waives its right to an FPA, the year the waiver is executed by the IRS). Proposed § 301.6241–1(a)(2) defines an ''adjustment year partner'' to mean any person who held an interest in a partnership at any time during the adjustment year of the partnership.

Proposed § 301.6241–1(a)(5) defines the term ''pass-through partner'' to mean a pass-through entity that holds an interest in a partnership. A pass-through entity is a partnership (including a foreign entity that is classified as a partnership under § 301.7701–3(b)(2)(i)(A) or (c)), an S corporation, a trust, (other than a trust described in the next sentence), and a decedent's estate. The term ''pass-through partner'' does not include disregarded entities described in § 301.7701–2(c)(2)(i) or a trust that is wholly owned by only one person, whether the grantor or another person, and the trust reports the owner's information to payors under § 1.671–4(b)(2)(i)(A). In addition, the term ''pass-through partner'' does not include entities such as a registered investment company under section 851 or a real estate investment trust under section 856.

Proposed § 301.6241–1(a)(7) defines the term ''partnership-partner'' to mean a partnership that holds an interest in a partnership. A partnership-partner is a type of pass-through partner as defined in proposed § 301.6241–1(a)(5).

Proposed § 301.6241–1(a)(4) defines an ''indirect partner'' as any person who has an interest in the partnership through their interest in one or more pass-through partners. For example, a shareholder in an S corporation that is a partner in a partnership is an indirect partner of that partnership.

B. Partnership Adjustment, Imputed Underpayment, and Tax Attribute

Under proposed § 301.6241–1(a)(6), the term ''partnership adjustment'' means any adjustment to the amount of any item of income, gain, loss, deduction, or credit as defined in proposed § 301.6221(a)–1(b)(1), or any partner's distributive share thereof, as described under proposed § 301.6221(a)–1(b)(2).

Proposed § 301.6241–1(a)(3) defines the term ''imputed underpayment'' as any amount determined in accordance with proposed § 301.6225–1.

For purposes of subchapter C of chapter 63, proposed § 301.6241–1(a)(10) defines the term ''tax attribute''. Under this definition, a tax attribute is anything that can affect, with respect to a partnership or partner, the amount or timing of an item of income, gain, loss, deduction or credit as defined in proposed § 301.6221(a)–1(b)(1) or that can affect the amount of tax due in any taxable year. Examples of tax attributes include, but are not limited to, basis and holding period, as well as the character of items of income, gain, loss, deduction, or credit and carryovers and carrybacks of such items.

C. Bankruptcy

Under proposed § 301.6241–2(a)(1), if a partnership is a debtor in a Title 11 bankruptcy case, the running of any period of limitations under section 6235 for making a partnership adjustment, and under sections 6501 and 6502 for assessment or collection of any imputed underpayment, is suspended during the period the bankruptcy case prohibits the IRS from making the adjustment, assessment, or collection. The suspension runs until the prohibition ends, plus 60 days in the case of an

adjustment or assessment, or six months in the case of collection.

While proposed § 301.6241–2(a)(1) follows the language in section 6241(6) to suspend the adjustment, assessment, and collection periods when those actions are prohibited by a bankruptcy case, the Bankruptcy Code does not prohibit two of those actions—adjustment or assessment. No provision of the automatic stay in section 362(a) of Title 11 prevents tax audits or the issuance of an FPA, the mechanism for adjustment, and the making of a tax assessment is expressly allowed under section 362(b)(9) of Title 11 notwithstanding the general stay against tax assessments in section 362(a)(6) of Title 11.

Proposed § 301.6241–2(a)(2) clarifies that the filing of a proof of claim or request for payment and the taking of other actions in the partnership's bankruptcy case do not violate the restrictions in section 6232(b) prohibiting assessment or collection during the 90-day period to petition for judicial review under section 6234 and, if a petition is filed, before the court's decision becomes final.

Under proposed § 301.6241–2(a)(3), the period to petition for judicial review is suspended while the bankruptcy case prevents the partnership from filing a petition under section 6234, and for 60 days thereafter.

Proposed § 301.6241–2(a)(4) clarifies that bankruptcy law does not prohibit audits, mailing of notices under section 6231, demands for unfiled returns, assessments or notice or demand for payment of assessments.

D. Partnerships That Cease To Exist

Proposed § 301.6241–3 follows section 6241(7) and provides that if the IRS determines that any partnership (including a partnership-partner) ceases to exist before a partnership adjustment under subchapter C of chapter 63 takes effect, the partnership adjustment is taken into account by the former partners of the partnership.

Under proposed § 301.6241–3(c), a partnership adjustment takes effect when all amounts due under subchapter C of chapter 63 resulting from the partnership adjustment are fully paid by the partnership. Therefore, if a partnership does not pay the amounts owed, the partnership adjustment resulting in the imputed underpayment or other amount due has not taken effect. As a result, former partners of a partnership may be required to take into account partnership adjustments if a partnership does not pay an imputed underpayment (and any applicable interest, penalties, additions to tax, or additional amounts) under section 6225 or section 6227. Additionally, former partners of a partnership-partner may be required to take into account partnership adjustments if a partnership-partner does not pay any amount due (including any applicable interest, penalties, additions to tax, or additional amounts) under section 6226 or section 6227 as a result of receiving a statement from a partnership in which it is a partner under proposed § 301.6226–2 or proposed § 301.6227–2.

As provided in proposed § 301.6241–3(a)(3), the provisions of proposed § 301.6241–3 do not apply to partnerships that have a valid election in effect under section 6221(b) and the regulations thereunder. Accordingly, the former partners of a partnership that has elected out of the centralized partnership audit regime are not required to take partnership adjustments into account under proposed § 301.6241–3.

Under proposed § 301.6241–3(b)(1), the IRS may, in its discretion, determine that a partnership ceases to exist. Only the IRS may determine that a partnership has ceased to exist. No other person, including the partnership, the partnership representative, nor any partner, current or former, has the ability to make this determination for purposes of invoking the provisions of section 6241(7) and the proposed regulations. The IRS is not required to make a determination that a partnership ceases to exist even if the definition in proposed § 301.6241–3(b)(2) applies with respect to such partnership. If the IRS determines that any partnership has ceased to exist for purposes of these rules, the IRS will notify the partnership and the former partners, in writing, at their last known address, within 30 days of the determination. If the IRS determines that a partnership (or partnership-partner) has ceased to exist, the partnership is no longer liable for any remaining amounts owed resulting from a partnership adjustment that is required to be taken into account by a former partner. Proposed § 301.6241–3(a)(2).

Proposed § 301.6241–3(b)(2) defines the term ''cease to exist'' for purposes of section 6241(7). Under proposed § 301.6241–3(b)(2), a partnership ceases to exist if the partnership terminates within the meaning of section 708(b)(1)(A) or does not have the ability to pay, in full, any amount that the partnership owes under subchapter C of chapter 63. See JCS–1–16 at 80 (noting that a partnership ceases to exist if it terminates under section 708(b)(1)(A), as well as when the partnership ''has no significant income, revenue, assets, or activities at the time the partnership adjustment takes effect''). A partnership does not have the ability to pay if the IRS determines that the account with respect to the partnership is not collectible based on the information that the IRS has at the time of the determination. In making that determination, the IRS will rely on existing guidance regarding when a taxpayer account is not collectible and is not required to develop additional facts that are not known to the IRS at the time the decision is made.

Proposed § 301.6241(b)(2)(i) provides that the IRS will not determine that a partnership has ceased to exist solely because: (i) A partnership has technically terminated under section 708(b)(1)(B); (ii) the partnership had made a valid election under section 6226 and the regulations thereunder with respect to any imputed underpayment; or (iii) the partnership has not paid any amount the partnership is liable for under subchapter C of chapter 63. If a partnership terminates under section 708(b)(1)(A), the partnership ceases to exist on the last day of the partnership's final taxable year. If a partnership does not have the ability to pay, the partnership ceases to exist on the date that the IRS makes a determination under proposed § 301.6241–3(b)(2)(i) that the partnership ceases to exist. Proposed § 301.6241–3(b)(2)(ii).

Proposed § 301.6241–3 only applies if the IRS has determined that a partnership has ceased to exist before a partnership adjustment determined in a partnership-level proceeding under the centralized partnership audit regime takes effect. As described in proposed § 301.6241–3(c), for purposes of this section, a partnership adjustment takes effect when all amounts due under subchapter C of chapter 63 resulting from the partnership adjustment are fully paid by the partnership. However, in no event may the IRS determine that a partnership ceases to exist with respect to a partnership adjustment after the expiration of the period of limitations on collection applicable to the amount due resulting from such adjustment. Proposed § 301.6241–3(b)(2)(iii). In the event that a partnership pays some, but not all, of any amount due resulting from a partnership adjustment before a partnership ceases to exist, the former partners of the partnership that has ceased to exist are not required to take into account the portion of the partnership adjustments with respect to which any amounts have been paid by the partnership. Proposed § 301.6241–3(c)(2). In cases of partial payment, the

notification that the IRS has determined that the partnership has ceased to exist will include information regarding the portion of the partnership adjustments that are attributable to any remaining balance owed by the partnership that must be taken into account by the former partners.

If the IRS determines that a partnership ceases to exist, the partnership adjustments are taken into account by the former partners of the partnership. Under proposed § 301.6241–3(d)(1)(i), the term ''former partners'' means the adjustment year partners of a partnership that has ceased to exist. If any adjustment year partner is a partnership-partner that the IRS has determined has ceased to exist, the partners of the partnership-partner for the partnership-partner's taxable year that includes the end of the adjustment year of the partnership that has ceased to exist are the former partners for purposes of this section. Proposed § 301.6241–3(d)(1)(ii). If there are no adjustment year partners of a partnership, including where there are no partners of a partnership-partner, (for instance, because the partnership ceased to exist before the adjustment year), the term ''former partners'' means the partners of the partnership (or partnership-partner) during the last taxable year for which a partnership return was filed under section 6031(b). Proposed § 301.6241–3(d)(2).

Under proposed § 301.6241–3(e), the former partners of a partnership that has ceased to exist take the partnership adjustment into account as if the partnership had made an election under section 6226 and the regulations thereunder. A former partner must take into account the former partner's share of a partnership adjustment reflected in the statement provided to the former partner in accordance with proposed § 301.6226–3.

If a partnership is notified by the IRS that it has ceased to exist, the partnership must furnish statements to its former partners reflecting the former partner's share of the partnership adjustments required to be taken into account, and file the statements with the IRS, no later than 30 days after the date of the notice from the IRS in which the IRS determines that the partnership ceases to exist. Proposed § 301.6241–3(e)(2)(ii). The statements must conform to the requirements under proposed § 301.6226–2 except that the adjustments are taken into account by the former partners rather than the reviewed year partners. Proposed § 301.6241–3(e)(2)(i). If the statements are not timely furnished to the former partners, the IRS may furnish statements to the former partners to inform those partners of their share of the adjustments. Proposed § 301.6241–3(e)(3). If the IRS furnishes the statements to the former partners, the IRS will notify the former partner in writing of such partner's share of the partnership adjustment based on the information reasonably available to the IRS at the time such notification is provided. A notification issued by the IRS is treated the same as a statement required to be furnished and filed under proposed § 301.6241–3(e)(2).

Proposed § 301.6241–3(f) provides examples that illustrate the provisions of this section.

E. Nondeductible Payments

Proposed § 301.6241–4 provides generally that the payment of any amount under subchapter C of chapter 63 is nondeductible, and must be treated as an expenditure described in section 705(a)(2)(B) (that is, not deductible and not properly chargeable to a capital account). Accordingly, a payment by a partnership of any amount required to be paid under subchapter C of chapter 63, including any imputed underpayment, any amount under proposed § 301.6226–3 (regarding reviewed year partners taking into account partnership adjustments), and any interest, penalties, additions to tax, or additional amounts with respect to such amounts is treated as an expenditure described in section 705(a)(2)(B).

F. Extension to Entities Filing Partnership Returns

Proposed § 301.6241–5 extends the provisions of the centralized partnership audit regime to a taxable year for which any entity files a partnership return (Form 1065, *U.S. Return of Partnership Income*), even if it is determined that the entity filing the return is not a partnership (proposed § 301.6241–5(a)) or even that no entity existed (proposed § 301.6241–5(b)). Under proposed § 301.6241–5(a), if an entity files a partnership return for a taxable year, the provisions of subchapter C of chapter 63 (and the regulations thereunder) apply to that entity, its items (and any partner's distributive share of those items), and any person holding an interest in that entity at any time during the taxable year for which the partnership return was filed.

Proposed § 301.6241–5(c) provides exceptions to the general rules in proposed § 301.6241–5(a). Under proposed § 301.6241–5(c)(1), the provisions of subchapter C of chapter 63 do not apply to taxable years for which a valid election under section 6221(b) to elect out of the centralized partnership audit regime is in effect. Under proposed § 301.6241–5(c)(2), the provisions of subchapter C of chapter 63 do not apply to taxable years for which a partnership return is filed solely to make an election described in section 761(a) (election out of subchapter K of chapter 1 for certain unincorporated organizations).

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. However, pursuant to Executive Order 13789, the Treasury Department is currently reviewing the scope and implementation of the existing exemption for certain tax regulations from the review process set forth in Executive Order 12866. Because the proposed regulations would not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices and other guidance 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 Web site at *www.irs.gov.*

Comments

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments submitted will be made available at *www.regulations.gov* or upon request.

A public hearing has been scheduled for September 18, 2017, beginning at 10:00 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the

Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by August 14, 2017. A period of 10 minutes will be allocated to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are Jennifer M. Black, Joy E. Gerdy-Zogby, and Steven L. Karon of the Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–138326–07) that was published in the **Federal Register** on Friday, February 13, 2009 (74 FR 7205) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 2.** Section 301.6221(a)–1 is added to read as follows:

§ 301.6221 (a)–1 Scope of the partnership procedures under subchapter C of chapter 63 of the Internal Revenue Code.

(a) *In general.* Any adjustment to items of income, gain, loss, deduction, or credit (as defined in paragraph (b)(1) of this section) of a partnership for a partnership taxable year and any partner's distributive share (as defined in paragraph (b)(2) of this section) thereof is determined, any tax attributable thereto is assessed and collected, and the applicability of any penalty, addition to tax, or additional amount that relates to an adjustment to any such item or share is determined at the partnership level under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63). See § 301.6222–1 for rules relating to assessment and collection in a proceeding involving inconsistent reporting pursuant to section 6222. See § 301.6225–2 for rules with respect to an amended return in the case of modification under section 6225(c)(2). See § 301.6226–3 for rules in cases where an election under section 6226 is made.

(b) *Definitions.* Solely for purposes of paragraph (a) of this section the following terms have the meaning described in this paragraph (b).

(1) *Items of income, gain, loss, deduction, or credit*–(i) *In general.* The phrase *items of income, gain, loss, deduction, or credit* means all items and information required to be shown, or reflected, on a return of the partnership under section 6031, the regulations thereunder, and the forms and instructions prescribed by the Internal Revenue Service (IRS) for the partnership's taxable year, and any information in the partnership's books and records for the taxable year. This phrase includes—

(A) the character, timing, source, and amount of the partnership's income, gain, loss, deductions, and credits, including whether an item is deductible, tax-exempt, or a tax-preference item;

(B) the character, timing, and source of the partnership's activities, including whether the partnership's activities are passive or active;

(C) contributions to, and distributions from, the partnership, including the value, amount, and character of those contributions and distributions (for example, for purposes of sections 704(c), 721(b), 721(c), 737, and 751(b));

(D) the partnership's basis in its assets, the character and type of the assets, and the value (or revaluation such as under § 1.704–1(b)(2)(iv)(f) or (s) of this chapter) of the assets; including any effect the character or value of the partnership's assets has on the sale or exchange of an interest in the partnership (for example, for purposes of section 751(a));

(E) the amount and character of partnership liabilities, including whether a liability is recourse or nonrecourse and any changes to those liabilities from the preceding tax year;

(F) the separate category, timing, and amount of the partnership's creditable foreign tax expenditures described in § 1.704–1(b)(4)(viii)(b) of this chapter;

(G) any elections made by the partnership and the consequences or effects of those elections, including a section 754 election, any election referenced in section 703(b), a section 761 election, and an election under sections 6221(b) or 6226(a);

(H) items related to transactions between a partnership and any person including disguised sales, guaranteed payments, section 704(c) allocations, and transactions to which section 707 applies;

(I) any item resulting from a partnership terminating under section 708(b)(1)(A), including as a result of a transaction under Rev. Rul. 99–6 (1999–1 C.B. 432) (see § 601.601(d)(2) of this chapter);

(J) items and any effects from a technical termination under section 708(b)(1)(B); and

(K) partner capital accounts, including the release of a partner from a deficit restoration obligation.

(ii) *Factors that affect the determination of items of income, gain, loss, deduction, or credit.* Any factors that must be taken into account to determine or allocate the tax treatment of items adjusted under subchapter C of chapter 63 (in accordance with paragraph (b)(1) of this section) are determined at the partnership level. Such factors include—

(A) the legal and factual determinations that underlie the determination of items of income, gain, loss, deduction, or credit;

(B) the partnership's accounting practices and methods;

(C) whether any person is a partner in the partnership;

(D) whether a partnership exists for tax purposes, including whether multiple partnerships should be treated as a single partnership;

(E) whether any items or transactions of the partnership, the adjustments to which are determined under subchapter C of chapter 63, lack economic substance or should otherwise be disregarded, collapsed, recharacterized, or attributed to other persons (for example, under the step transaction doctrine), including whether the

partnership is a sham or should otherwise be disregarded for tax purposes (including under § 1.701–2 of this chapter and any applicable judicial doctrines);

(F) the period of limitations on making adjustments under subchapter C of chapter 63;

(G) the period of limitations on the assessment of amounts attributable to adjustments determined under subchapter C of chapter 63, except for the period of limitations under section 6501 with regard to assessments of tax attributable to adjustments taken into account by partners as a result of an election under section 6226;

(H) partners' outside bases, but only to the extent the partners' outside bases relate to an adjustment determined under subchapter C of chapter 63; and

(I) any determinations necessary to calculate the imputed underpayment (as defined in § 301.6241–1(a)(3)) under section 6225, including whether items adjusted under subchapter C of chapter 63 are limited (or subject to limitations) under the Internal Revenue Code (or a treaty), and the facts and circumstances specific to any partner(s) that might affect the calculation of an imputed underpayment or modification requested by the partnership with respect to an imputed underpayment.

(2) *Partner's distributive share.* The phrase *partner's distributive share* includes—

(i) the partner's share of items adjusted under subchapter C of chapter 63, including the type of partnership interest(s) the partner holds and the percentage interest of a partner in the partnership;

(ii) the allocation of any item determined under subchapter C of chapter 63;

(iii) any special allocations applicable to any partner;

(iv) the character, source, and timing of any item or activity required to be taken into account by the partner which is related to any item adjusted under subchapter C of chapter 63; and

(v) any amount required to be taken into account by any person under section 6226.

(3) *Tax.* For purposes of section 6221(a), the term *tax* means tax imposed by chapter 1 of subtitle A of the Internal Revenue Code.

(c) *Penalty defenses*—(1) *In general.* Any defense to any penalty, addition to tax, or additional amount must be raised by the partnership in a partnership-level proceeding under subchapter C of chapter 63, regardless of whether the defense relates to facts and circumstances relating to a person other than the partnership. After the adjustments determined in a partnership proceeding under subchapter C of chapter 63 become final, no defense to any penalty determined may be raised or taken into account in determining the applicable penalties, additions to tax, or additional amounts under subchapter C of chapter 63 with respect to any person.

(2) *Examples.* The following examples illustrate the rules of this paragraph (c).

Example 1. The IRS initiates an administrative proceeding with respect to Partnership's taxable year under subchapter C of chapter 63. During the proceeding, the IRS mails to Partnership a notice of proposed partnership adjustment under section 6231 that imposes a section 6662 accuracy-related penalty with respect to an imputed underpayment on the grounds that the imputed underpayment is attributable to negligence or disregard of rules or regulations. Partnership believes that the actions of A, a partner in the partnership for the taxable year subject to the administrative proceeding, demonstrate that A had reasonable cause and acted in good faith with respect to how A reported on A's Federal income tax return the items that were adjusted and gave rise to the imputed underpayment subject to the penalty. Partnership provides this information to the IRS during the administrative proceeding in response to the notice of proposed partnership adjustment. The IRS will take this penalty defense into account when determining whether the portion of the penalty that relates to the adjustments attributable to A applies at the partnership level.

Example 2. Same facts as in *Example 1* of this paragraph (c)(2), except Partnership does not provide A's information to the IRS during the administrative proceeding. The IRS mails Partnership a notice of final partnership adjustment (FPA) under section 6231. Partnership does not challenge the FPA in court. Partnership makes a timely election under section 6226 (regarding the alternative to payment of the imputed underpayment) and furnishes each reviewed year partner (as defined in § 301.6241–1(a)(9)) a statement including the reviewed year partner's share of the section 6662 accuracy-related penalty determined in the FPA. In taking the section 6662 accuracy-related penalty into account, A raises with the IRS a reasonable cause defense based on A's actions, asserting that A had reasonable cause and acted in good faith. Because all defenses against a penalty imposed under subchapter C of chapter 63 may only be raised by Partnership, A may not raise a defense to his share of the section 6662 penalty determined under section 6226. Therefore, the IRS will not take the penalty defense into account.

(d) *Coordination with other chapters of the Internal Revenue Code.* Nothing in subchapter C of chapter 63 and the regulations thereunder precludes the IRS from making any adjustment to an item described in paragraph (b) of this section for purposes of determining taxes imposed by other provisions of the Internal Revenue Code (that is, taxes not imposed by chapter 1 of subtitle A).

(e) *Applicability date*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22T in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22T is in effect.

■ **Par. 3.** Section 301.6221(b)–1 is added to read as follows:

§ 301.6221(b)–1 Election out for certain partnerships with 100 or fewer partners.

(a) *In general.* The provisions of subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) do not apply for any partnership taxable year for which an eligible partnership under paragraph (b) of this section makes a valid election in accordance with paragraph (c) of this section. For rules regarding deficiency procedures, see subchapter B of chapter 63 of the Internal Revenue Code and §§ 301.6211–1 through 301.6215–1.

(b) *Eligible partnership*—(1) *In general.* Only an eligible partnership may make an election under this section. A partnership is an eligible partnership for purposes of this section if—

(i) the partnership has 100 or fewer partners as determined in accordance with paragraph (b)(2) of this section, and

(ii) each statement the partnership is required to furnish under section 6031(b) for the partnership taxable year is furnished to a partner that was an eligible partner (as defined in paragraph (b)(3) of this section) for the partnership's entire taxable year.

(2) *100 or fewer partners*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, a partnership has 100 or fewer partners if the partnership is required to furnish 100 or fewer statements under section 6031(b) for the taxable year.

(ii) *Special rule for S corporations.* For purposes of this paragraph (b)(2), a partnership with a partner that is an S corporation (as defined in section 1361(a)(1)) must take into account each statement required to be furnished by the S corporation to its shareholders under section 6037(b) for the taxable year of the S corporation ending with or within the partnership's taxable year.

(iii) *Examples.* The following examples illustrate the provisions of this paragraph (b)(2). For purposes of these examples, each partnership is

required to file a return under section 6031(a):

Example 1. During its 2020 partnership taxable year, Partnership has four partners each owning an interest in Partnership. Two of the partners are Spouse 1 and Spouse 2 who are married to each other during all of 2020. Spouse 1 and Spouse 2 each own a separate interest in Partnership. The two other partners are unmarried individuals. Under section 6031(b), Partnership is required to furnish a separate statement (that is, Schedule K–1 (Form 1065), *Partner's Share of Income, Deductions, Credits, etc.*) to each individual partner, including separate statements to Spouse 1 and Spouse 2. Therefore, for purposes of paragraph (b)(2) of this section, Partnership has four partners during its 2020 taxable year.

Example 2. The facts are the same as in *Example 1* of this paragraph (b)(2)(iii), except Spouse 2 does not separately own an interest in Partnership during 2020 and Spouse 1 and Spouse 2 live in a community property state. Spouse 1 and Spouse 2 have lived in the community property state for the entire taxable year and at all times since they were married. Spouse 1 acquired Spouse 1's interest in Partnership while married to Spouse 2. Because Spouse 2's community property interest in Spouse 1's partnership interest is not taken into account for purposes of determining the number of statements Partnership is required to furnish under section 6031(b), Partnership is required to furnish a statement to Spouse 1, but not to Spouse 2. Therefore, for purposes of paragraph (b)(2) of this section, Partnership has three partners during its 2020 taxable year.

Example 3. At the beginning of 2020, Partnership, which has a taxable year ending December 31, 2020, has three partners—individuals A, B, and C. Each individual owns an interest in Partnership. On June 30, 2020, Individual A dies, and A's interest in Partnership becomes an asset of A's estate. A's estate owns the interest for the remainder of 2020. On September 1, 2020, B sells his interest in Partnership to Individual D, who holds the interest for the remainder of the year. Under section 6031(b), Partnership is required to furnish five statements for its 2020 taxable year—one each to Individual A, the estate of Individual A, Individual B, Individual D, and Individual C. Therefore, for purposes of paragraph (b)(2) of this section, Partnership has five partners during its 2020 taxable year.

Example 4. During its 2020 taxable year, Partnership has 51 partners—50 partners who are individuals and S, an S corporation. S and Partnership are both calendar year taxpayers. S has 50 shareholders during the 2020 taxable year. Under section 6031(b), Partnership is required to furnish 51 statements for the 2020 taxable year—one to S and one to each of Partnership's 50 partners who are individuals. Under section 6037(b), S is required to furnish a statement (that is, Schedule K–1 (Form 1120–S), *Shareholder's Share of Income, Deductions, Credits, etc.*) to each of its 50 shareholders. Under paragraph (b)(2)(ii) of this section, the number of statements required to be furnished by S under section 6037(b), which is 50, is taken into account to determine whether partnership has 100 or fewer partners. Accordingly, for purposes of paragraph (b)(2) of this section, Partnership has a total of 101 partners (51 statements furnished by Partnership to its partners plus 50 statements furnished by S to its shareholders) and is therefore not an eligible partnership under paragraph (b)(1) of this section. Because Partnership is not an eligible partnership, it cannot make the election under paragraph (a) of this section.

Example 5. During its 2020 taxable year, Partnership has two partners, A, an individual, and E, an estate of a deceased partner. E has 10 beneficiaries. Under section 6031(b), Partnership is required to furnish two statements, one to A and one to E. Any statements that E may be required to furnish to its beneficiaries are not taken into account for purposes of paragraph (b)(2) of this section. Therefore, Partnership has two partners under paragraph (b)(2) of this section.

(3) *Eligible Partners*—(i) *In general.* For purposes of paragraph (b)(1)(ii) of this section, the term *eligible partner* means a partner that is an individual, a C corporation (as defined by section 1361(a)(2)), an eligible foreign entity described in paragraph (b)(3)(iii) of this section, an S corporation, or an estate of a deceased partner. An S corporation is an eligible partner regardless of whether one or more shareholders of the S corporation are not an eligible partner.

(ii) *Partners that are not eligible partners.* A partner is not an eligible partner under paragraph (b)(3)(i) of this section if the partner is—

(A) a partnership,

(B) a trust,

(C) a foreign entity that is not an eligible foreign entity described in paragraph (b)(3)(iii) of this section,

(D) a disregarded entity described in § 301.7701–2(c)(2)(i),

(E) a nominee or other similar person that holds an interest on behalf of another person, or

(F) an estate of an individual other than a deceased partner.

(iii) *Eligible foreign entity.* For purposes of this paragraph (b)(3), a foreign entity is an eligible partner if the foreign entity would be treated as a C corporation if it were a domestic entity. For purposes of the preceding sentence, a foreign entity would be treated as a C corporation if it were a domestic entity if the entity is classified as a per se corporation under § 301.7701–2(b)(1), (3), (4), (5), (6), (7), or (8), is classified by default as an association taxable as a corporation under § 301.7701–3(b)(2)(i)(B), or is classified as an association taxable as a corporation in accordance with an election under the provisions of § 301.7701–3(c).

(iv) *Examples.* The following examples illustrate the rules of this paragraph (b)(3). For purposes of these examples, each partnership is required to file a return under section 6031(a):

Example 1. During the 2020 taxable year, Partnership has four equal partners. Two partners are individuals. One partner is a C corporation. The fourth partner, D, is a partnership. Because D is a partnership, D is not an eligible partner under paragraph (b)(3)(i) of this section. Accordingly, Partnership is not an eligible partnership under paragraph (b)(1) of this section and, therefore, cannot make the election under paragraph (a) of this section for its 2020 taxable year.

Example 2. During its 2020 taxable year, Partnership has four equal partners. Two partners are individuals. One partner is a C corporation. The fourth partner, S, is an S corporation. S has ten shareholders. One of S's shareholders is a disregarded entity and one is a qualified small business trust. S is an eligible partner under paragraph (b)(3)(i) of this section even though S's shareholders would not be considered eligible partners if those shareholders held direct interests in Partnership. See § 301.6221(b)–1(b)(3)(i). Accordingly, Partnership meets the requirements under paragraph (b)(3) of this section for its 2020 taxable year.

Example 3. During its 2020 taxable year, Partnership has two equal partners, A, an individual, and C, a disregarded entity, wholly owned by B, an individual. C is not an eligible partner under paragraph (b)(3)(i) of this section. Accordingly, Partnership is not an eligible partnership under paragraph (b)(1)(ii) of this section and, therefore, is ineligible to make the election under paragraph (a) of this section for its 2020 taxable year.

(c) *Election*—(1) *In general.* An election under this section must be made on the eligible partnership's timely filed return, including extensions, for the taxable year to which the election applies and include all information required by the Internal Revenue Service (IRS) in forms, instructions, or other guidance. An election is not valid unless the partnership discloses to the IRS all of the information required under paragraph (c)(2) of this section about all partners and, in the case of a partner that is an S corporation, the shareholders of such S corporation. An election once made may not be revoked without the consent of the IRS.

(2) *Disclosure of partner information to the IRS.* A partnership making an election under this section must disclose to the IRS information about each person that was a partner at any time during the taxable year of the partnership to which the election applies, including each partner's name, correct U.S. taxpayer identification number (TIN), and Federal tax classification, an affirmative statement that the partner is an eligible partner under paragraph (b)(3) of this section,

and any other information required by the IRS in forms, instructions, or other guidance. If a partner is an S corporation, the partnership must also disclose to the IRS the name, correct TIN, and Federal tax classification of each shareholder of the S corporation as well as any other information required by the IRS in forms, instructions, or other guidance.

(3) *Partner notification.* A partnership that makes an election under this section must notify each of its partners of the election within 30 days of making the election.

(d) *Election made by a partnership that is a partner*—(1) *In general.* The fact that a partnership has made an election under this section does not affect whether the provisions of subchapter C of chapter 63 apply to any other partnership, including a partnership in which the partnership making the election is a partner. Accordingly, the provisions of subchapter C of chapter 63 that apply to partners in a partnership that has not made an election under this section apply, to the extent provided in the regulations under subchapter C of chapter 63, to partners that are themselves partnerships that have made an election under this section in their capacity as partners in the other partnership.

(2) *Examples.* The following examples illustrate the rules of paragraph (d)(1) of this section. For purposes of these examples, each partnership is required to file a return under section 6031(a):

Example 1. During its 2020 taxable year, Partnership, a calendar year taxpayer, has two partners. One partner, A, is also a calendar year partnership. A files a valid election out of the centralized partnership audit regime with its timely filed partnership return for its 2020 taxable year. Notwithstanding A's valid election out of the centralized partnership audit regime, A is subject to the same rules as any partner in a partnership subject to the rules under subchapter C of chapter 63, including the consistency requirements of section 6222 and the regulations thereunder.

Example 2. The IRS mails to Partnership, a calendar year taxpayer, a notice of final partnership adjustment under section 6231 with respect to Partnership's 2020 taxable year. Partnership timely elects the alternative to payment of imputed underpayment under section 6226 and the regulations thereunder. One of Partnership's partners is A, a calendar year partnership. A made a valid election out of the centralized partnership audit regime with its timely filed partnership return for its 2020 taxable year. Partnership must provide A with a statement under section 6226 containing A's share of the adjustments for Partnership's 2020 taxable year. A is subject to the same rules as any partner in a partnership subject to the rules under subchapter C of chapter 63.

(e) *Effect of an election*—(1) *In general.* An election made under this section is an action taken under subchapter C of chapter 63 by the partnership for purposes of section 6223. Accordingly, the partnership and all partners are bound by an election of the partnership under this section unless the IRS determines that the election is invalid. See § 301.6223–2 for the binding nature of actions taken by a partnership under subchapter C of chapter 63.

(2) *IRS determination that election is invalid.* If the IRS determines that an election under this section for a partnership taxable year is invalid, the IRS will notify the partnership in writing and the provisions of subchapter C of chapter 63 will apply to that partnership taxable year.

(f) *Applicability date.* These regulations are applicable to partnership taxable years beginning after December 31, 2017.

■ **Par. 4.** Section 301.6222–1 is added to read as follows:

§ 301.6222–1 Partner's return must be consistent with partnership return.

(a) *Consistent treatment of items*—(1) *In general.* The treatment on a partner's return of each item of income, gain, loss, deduction, or credit (as defined in § 301.6221(a)–1(b)(1)) attributable to a partnership must be consistent with the treatment of those items on the partnership return in all respects, including the amount, timing, and characterization of those items. A partner has not satisfied the requirement of this paragraph (a) if the treatment of the item on the partner's return is consistent with how the item was treated on a schedule or other information furnished to the partner by the partnership but inconsistent with the treatment of the item on the partnership return actually filed. For rules relating to the election to be treated as having reported the inconsistency where the partner treats an item consistently with an incorrect schedule or other information furnished by the partnership, see paragraph (d) of this section.

(2) *Partner that is a partnership.* The rules of this section apply to a partnership-partner (as defined in § 301.6241–1(a)(7)) regardless of whether the partnership-partner has made an election under section 6221(b) to elect out of the provisions of subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63). Accordingly, unless the requirements of paragraph (c) of this section are satisfied, a partnership-partner must treat items attributable to a partnership in which it is a partner consistent with the treatment of such items on the partnership return filed by the partnership in which it is a partner.

(3) *Partnership does not file a return.* A partner's treatment of items attributable to a partnership that does not file a return is per se inconsistent, unless the partner files a notice of inconsistent treatment under paragraph (c) of this section.

(4) *Treatment of items on a partnership return.* For purposes of this section, the treatment of an item on a partnership return includes—

(i) the treatment of an item on the partnership's return of partnership income filed with the IRS under section 6031, and any amendment or supplement thereto, including an administrative adjustment request (AAR) filed pursuant to section 6227 and the regulations thereunder; and

(ii) the treatment of an item on any statement, schedule or list, and any amendment or supplement thereto, filed by the partnership with the Internal Revenue Service (IRS), including any statements filed pursuant to section 6226 and the regulations thereunder.

(5) *Examples.* The following examples illustrate the rules of this paragraph (a). For purposes of these examples, each partnership is subject to the provisions of subchapter C of chapter 63, and each partnership and its partners are calendar year taxpayers, unless otherwise stated.

Example 1. B is a partner in Partnership during 2018 and 2019. Both B and Partnership are calendar year taxpayers. In December 2018, Partnership receives an advance payment for services to be performed in 2019 and reports this amount as income on its partnership return for 2018. B includes its distributive share of income from the advance payment on B's income tax return for 2019 and not on B's income tax return for 2018. B did not file a notice of inconsistent treatment with respect to the advanced payment. B's treatment of the income attributable to Partnership is inconsistent with the treatment of that item by Partnership on its partnership return.

Example 2. C is a partner in Partnership during 2018. Partnership incurred start-up costs before it was actively engaged in its business. Partnership capitalized these costs on its 2018 partnership return. C deducted his distributive share of the start-up costs on C's 2018 income tax return. C's treatment of the start-up costs is inconsistent with the treatment of that item by Partnership on its partnership return.

Example 3. D is a partner in Partnership during 2018. Partnership reports a loss of $100,000 on its partnership return for 2018. On the 2018 Schedule K–1 attached to the partnership return, Partnership reports $5,000 as D's distributive share of that loss. On the 2018 Schedule K–1 furnished to D, however, Partnership reports $15,000 as D's distributive share of the loss. D reports the

$15,000 loss on D's 2018 income tax return. D has not satisfied the requirements of paragraph (a) of this section because D reported D's distributive share of the loss in a manner that is inconsistent with how D's distributive share of the loss was reported on the 2018 partnership return actually filed. See, however, paragraph (d) of this section for the election to be treated as having reported the inconsistency where the partner treats an item consistently with an incorrect schedule.

Example 4. D was a partner in Partnership during 2018. Partnership reports a loss of $100,000 on its partnership return for 2018. In 2020, Partnership files an AAR under section 6227 reporting that the amount of the loss on its 2018 partnership return is $90,000, rather than $100,000 as originally reported. Pursuant to section 6227 and the regulations thereunder, Partnership elects to have its partners take the adjustment into account, and furnishes D a statement showing D's share of the reduced loss for 2018. D fails to take his share of the reduced loss for 2018 into account in accordance with section 6227 and the regulations thereunder. D has not satisfied the requirements of paragraph (a) of this section because D has not taken into account his share of the loss in a manner consistent with how Partnership treated such items on the partnership return actually filed.

Example 5. E was a partner in Partnership during 2018. In 2021, Partnership receives a notice of final partnership adjustment in an administrative proceeding under subchapter C of chapter 63 with respect to Partnership's 2018 taxable year. Partnership properly elects the application of section 6226 and furnishes to E a statement of E's share of adjustments with respect to Partnership's 2018 taxable year. E fails to take his share of the adjustments into account in accordance with section 6226 and the regulations thereunder. E has not satisfied the requirements of paragraph (a) of this section because E has not taken into account his share of adjustments with respect to Partnership's 2018 taxable year in a manner consistent with how Partnership treated such items on the partnership return actually filed.

Example 6. In 2018, E is a partner in Partnership. E is a partnership-partner with a 2018 taxable year that ends on the same day as Partnership's 2018 taxable year. E has filed a valid election under section 6221(b) in effect with respect to E's 2018 partnership taxable year. Notwithstanding E's election under section 6221(b) for its 2018 taxable year, E is subject to section 6222 for taxable year 2018. E must treat, on its 2018 partnership return, any items attributable to E's interest in Partnership in a manner that is consistent with the treatment of those items on the 2018 partnership return actually filed by Partnership.

(b) *Effect of inconsistent treatment*—(1) *Determination of underpayment of tax resulting from inconsistent treatment.* If a partner fails to satisfy the requirements of paragraph (a) of this section, unless the partner provides notice in accordance with paragraph (c) of this section, the IRS may adjust the inconsistently reported item on the partner's return to make it consistent with the treatment of such item on the partnership return and determine the underpayment of tax that results from that adjustment. For purposes of this section, the underpayment of tax is the amount by which the correct tax, as determined by making the partner's return consistent with the partnership return, exceeds the tax shown on the partner's return.

(2) *Assessment and collection of tax.* The IRS may assess and collect any underpayment of tax resulting from an adjustment described in paragraph (b)(1) of this section in the same manner as if the underpayment of tax was on account of a mathematical or clerical error appearing on the partner's return, except that the procedures under section 6213(b)(2) for requesting abatement of an assessment do not apply.

(3) *Effect when partner is a partnership.* If the partner is itself a partnership (a partnership-partner), any adjustment on account of such partnership-partner's failure to satisfy the requirements of paragraph (a) of this section will be treated as an adjustment on account of a mathematical or clerical error under section 6213(b), except that the procedures under section 6213(b)(2) for requesting abatement of an assessment do not apply. See section 6232(d)(1)(B).

(4) *Examples.* The following examples illustrate the rules of this paragraph (b).

Example 1. D, an individual, is a partner in Partnership. D and Partnership are both calendar year taxpayers and Partnership does not have an election under section 6221(b) in effect for its 2018 taxable year. On its partnership return for taxable year 2018, Partnership reports $100,000 in ordinary income. On the Schedule K–1 attached to the partnership return, as well as on the Schedule K–1 furnished to D, Partnership reports $15,000 as D's distributive share of the $100,000 in ordinary income. D reports only $5,000 of the $15,000 of ordinary income on his 2018 income tax return. The IRS may determine the amount of tax that results from adjusting the ordinary income attributable to D's interest in Partnership reported on D's 2018 income tax return from $5,000 to $15,000 and assess that resulting underpayment in tax as if it was on account of a mathematical or clerical error appearing on D's return. D may not request an abatement of that assessment under section 6213(b).

Example 2. F was a partner in Partnership during 2018. In 2021, Partnership receives a notice of final partnership adjustment in an administrative proceeding under subchapter C of chapter 63 with respect to Partnership's 2018 taxable year. Partnership properly elects the application of section 6226 and files with the IRS a statement of F's share of adjustments with respect to Partnership's 2018 taxable year. F fails to report one adjustment, F's share of a decrease in the amount of losses for 2018, on F's return as required by section 6226 and the regulations thereunder. The IRS may determine the amount of tax that results from adjusting the decrease in the amount of losses on F's return to be consistent with the amount included on the section 6226 statement filed with the IRS and may assess the resulting underpayment in tax as if it was on account of a mathematical or clerical error appearing on F's return. F may not request an abatement of that assessment under section 6213(b).

(c) *Notification to the IRS when items attributable to a partnership are treated inconsistently*—(1) *In general.* Paragraphs (a) and (b) of this section (regarding the consistent treatment of items and the effect of inconsistent treatment) do not apply to items identified as inconsistent (or that may be inconsistent) in a statement that the partner provides to the IRS according to the forms, instructions, and other guidance prescribed by the IRS. Instead, the procedures in paragraph (c)(3) of this section apply. A statement does not identify an inconsistency for purposes of this paragraph (c) unless it is attached to the partner's return on which the item is treated inconsistently.

(2) *Coordination with section 6223.* Paragraph (c)(1) of this section is not applicable to an item the treatment of which is binding on the partner because of actions taken by the partnership under subchapter C of chapter 63 or because of a final decision in a proceeding with respect to the partnership under subchapter C of chapter 63. Accordingly, the provisions of paragraph (c)(1) of this section do not apply with respect to the partner's treatment of an item reflected on an AAR under section 6227 or a statement under section 6226 filed by the partnership with the IRS to which the partner is bound under section 6223. Therefore, if the partner's treatment of the item reflected on an AAR or statement described in section 6226 is not consistent with the treatment of the partnership to which the partner is bound under section 6223, the provisions of section 6222(c) and paragraph (c)(1) of this section do not apply with respect to that item, and any resulting underpayment may be assessed and collected in accordance with paragraph (b)(2) of this section.

(3) *Partner protected only to extent of notification.* A partner who reports the inconsistent treatment of an item is not subject to paragraphs (a) and (b) of this section only with respect to those items identified in the statement described in paragraph (c)(1) of this section. Thus, if a partner notifying the IRS with respect

to one item does not report the inconsistent treatment of another item, the IRS may determine the amount of tax that results from adjusting the unidentified, inconsistently reported item on the partner's return to make it consistent with the treatment of the item on the partnership return, and assess the resulting underpayment of tax in accordance with paragraph (b)(2) of this section.

(4) *Adjustment after notification*—(i) *In general.* If a partner notifies the IRS of the inconsistent treatment of an item in accordance with paragraph (c)(1) of this section, and the IRS disagrees with the inconsistent treatment, the IRS may adjust the identified, inconsistently reported item in a proceeding with respect to the partner. Nothing in this paragraph (c)(4)(i) precludes the IRS from also conducting a proceeding with respect to the partnership.

(ii) *Adjustments in partner proceeding.* In a proceeding with respect to a partner described in paragraph (c)(4)(i) of this section, the IRS may adjust any identified, inconsistently reported item to make the item consistent with the treatment of that item on the partnership return or determine that the correct treatment of such item differs from the treatment on the partnership return and instead adjust the item to reflect the correct treatment, notwithstanding the treatment of that item on the partnership return. The IRS may also adjust any item on the partner's return, including items that are not attributable to the partnership. Any final decision with respect to an inconsistent position in a proceeding to which the partnership is not a party is not binding on the partnership.

(5) *Examples.* The following examples illustrate the rules of this paragraph (c). For purposes of these examples, each partnership is subject to the provisions of subchapter C of chapter 63, and each partnership and partner is a calendar year taxpayer, unless otherwise stated.

Example 1. B is a partner in Partnership during 2018. B treats a deduction and a capital gain attributable to Partnership on B's 2018 income tax return in a manner that is inconsistent with the treatment of those items by Partnership on its 2018 partnership return. B reports the inconsistent treatment of the deduction in accordance with paragraph (c)(1) of this section, but not the inconsistent treatment of the gain. Because B did not notify the IRS of the inconsistent treatment of the gain in accordance with paragraph (c)(1) of this section, the IRS may determine the amount of tax that results from adjusting the gain reported on B's 2018 income tax return in order to make the treatment of that gain consistent with how the gain was treated on Partnership's partnership return. Pursuant to paragraph (c)(3) of this section, the IRS may assess and collect the underpayment of tax resulting from the adjustment to the gain as if it was on account of a mathematical or clerical error appearing on B's return.

Example 2. On its 2018 partnership return, Partnership treats partner E's distributive share of ordinary loss attributable to Partnership as $8,000. E, however, claims an ordinary loss of $9,000 as attributable to Partnership on its 2018 income tax return and notifies the IRS of the inconsistent treatment in accordance with paragraph (c)(1) of this section. As a result of the notice of inconsistent treatment, the IRS conducts a separate proceeding under subchapter B of chapter 63 of the Internal Revenue Code with respect to E's 2018 income tax return, a proceeding to which Partnership is not a party. During the proceeding, the IRS determines that the proper amount of E's distributive share of the ordinary loss from Partnership is $3,000. During the same proceeding, the IRS also determines that E overstated a charitable contribution deduction in the amount of $2,500 on its 2018 income tax return. The determination of the adjustment of E's share of ordinary loss is not binding on Partnership. The charitable contribution deduction is not attributable to Partnership or to another partnership subject to the provisions of subchapter C of chapter 63. The IRS may determine the amount of tax that results from adjusting the $9,000 ordinary loss deduction to $3,000 and from adjusting the charitable contribution deduction. Pursuant to paragraph (c)(4)(ii) of this section, the IRS is not limited to only adjusting the ordinary loss of $9,000, as originally reported on E's partner return, to $8,000, as originally reported by Partnership on its partnership return, nor is the IRS prohibited from adjusting the charitable contribution deduction in the proceeding with respect to E.

(d) *Partner receiving incorrect information*—(1) *In general.* A partner is treated as having complied with section 6222(c)(1)(B) and paragraph (c)(1) of this section with respect to an item attributable to a partnership if the partner—

(i) Demonstrates that the treatment of the item on the partner's return is consistent with the treatment of that item on the statement, schedule, or other form prescribed by the IRS and furnished to the partner by the partnership, and

(ii) The partner makes an election in accordance with paragraph (d)(2) of this section.

(2) *Time and manner of making election*—(i) *In general.* An election under paragraph (d) of this section must be filed in writing with the IRS office set forth in the notice that notified the partner of the inconsistency no later than 60 days after the date of such notice.

(ii) *Contents of election.* The election described in paragraph (d)(2)(i) of this section must be—

(A) Clearly identified as an election under section 6222(c)(2)(B);

(B) Signed by the partner making the election;

(C) Accompanied by a copy of the statement, schedule, or other form furnished to the partner by the partnership and a copy of the IRS notice that notified the partner of the inconsistency; and

(D) Include any other information required in forms, instructions, or other guidance prescribed by the IRS.

(iii) *Treatment of item is unclear.* Generally, the requirement described in paragraph (d)(2)(ii)(C) of this section will be satisfied by attaching a copy of the statement, schedule, or other form furnished to the partner by the partnership to the election (in addition to a copy of the IRS notice that notified the partner of the inconsistency). However, if it is not clear from the statement, schedule, or other form furnished by the partnership that the partner's treatment of such item on the partner's return is consistent, the election must also include an explanation of how the treatment of such item on the statement, schedule, or other form furnished by the partnership is consistent with the treatment of the item on the partner's return, including with respect to the characterization, timing, and amount of such item.

(3) *Example.* The following example illustrates the rules of this paragraph (d). For purposes of this example, the partnership is subject to subchapter C of chapter 63 and the partnership and its partners are calendar year taxpayers.

Example. E is a partner in Partnership for 2018. On its 2018 partnership return, Partnership reports that E's distributive share of ordinary income attributable to Partnership is $1,000. Partnership furnishes to E a Schedule K–1 for 2018 showing $500 as E's distributive share of ordinary income. E reports $500 of ordinary income attributable to Partnership on its 2018 income tax return consistent with the Schedule K–1 furnished to E. The IRS notifies E that E's treatment of the ordinary income attributable to Partnership on its 2018 income tax return is inconsistent with how Partnership treated the ordinary income allocated to E on its 2018 partnership return. Within 60 days of receiving the notice from the IRS of the inconsistency, E files an election with the IRS in accordance with paragraph (d)(2) of this section. Because E made a valid election under section 6222(c)(2)(B) and paragraph (d)(1) of this section, E is treated as having notified the IRS of the inconsistency with respect to the ordinary income attributable to Partnership under paragraph (c)(1) of this section.

(e) *Applicability date*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies to

partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22T in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22T is in effect.

■ **Par. 5.** Section 301.6223–1 is added to read as follows:

§ 301.6223–1 Partnership representative.

(a) *Each partnership must have a partnership representative.* A partnership subject to subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) for a partnership taxable year must designate a partnership representative for the partnership taxable year in accordance with this section. There may be only one designated partnership representative for a partnership taxable year at any time. The designation of a partnership representative for a partnership taxable year under this section remains in effect until the date on which the designation of the partnership representative is terminated by valid resignation (as described in paragraph (d) of this section), valid revocation (as described in paragraph (e) of this section), or a determination by the Internal Revenue Service (IRS) that the designation is not in effect (as described in paragraph (f) of this section). A designation of a partnership representative for a partnership taxable year under paragraphs (d), (e), or (f) of this section supersedes all prior designations of a partnership representative for that year. A partnership representative must update the partnership representative's contact information when such information changes as required by forms, instructions, or other guidance prescribed by the IRS. See § 301.6223–2(a) and (b) with regard to the binding effect of actions taken by the partnership representative. See § 301.6223–2(c) with regard to the sole authority of the partnership representative to act on behalf of the partnership. See paragraph (f) of this section for rules regarding designation of a partnership representative by the IRS.

(b) *Eligibility to serve as a partnership representative*—(1) *In general.* Any person (as defined in section 7701(a)(1)) that meets the requirements of paragraphs (b)(2) and (3) of this section, as applicable, is eligible to serve as a partnership representative. A partnership representative who no longer has the capacity to act (as described in paragraph (b)(4) of this section) is ineligible to serve as a partnership representative. A person designated under this section as partnership representative is deemed to be eligible to serve as the partnership representative unless and until the IRS determines that the person is ineligible.

(2) *Substantial presence in the United States.* A person must have substantial presence in the United States to be the partnership representative. A person has substantial presence in the United States for the purposes of this section if—

(i) The person is available to meet in person with the IRS in the United States at a reasonable time and place, as is necessary and appropriate, as determined by the IRS;

(ii) The person has a street address that is in the United States and a telephone number with a United States area code where the person can be reached during normal business hours; and

(iii) The person has a United States taxpayer identification number.

(3) *Eligibility of an entity to be a partnership representative*—(i) *In general.* A person who is not an individual may be a partnership representative only if an individual who meets the requirements of paragraphs (b)(2) and (4) of this section is appointed by the partnership as the sole individual through whom the partnership representative will act for all purposes under subchapter C of chapter 63. A partnership representative meeting the requirements of this paragraph (b)(3) is an *entity partnership representative* and the individual through whom such entity partnership representative acts is the *designated individual.* Designated individual status automatically terminates on the date that designation of the entity partnership representative for which the designated individual was appointed is no longer in effect.

(ii) *Appointment of a designated individual.* A designated individual is appointed at the time of the designation of the entity partnership representative in the manner prescribed by the IRS in forms, instructions, and other guidance. Accordingly, if the entity partnership representative is designated on the partnership return for the taxable year in accordance with paragraph (c)(2) of this section, the designated individual must be appointed at that time. Similarly, if the entity partnership representative is designated under paragraph (d) of this section (regarding resignation and successor designation of a partnership representative) or paragraph (e) of this section (regarding revocation and subsequent designation after revocation of a partnership representative), the designated individual must be appointed at that time. If the partnership fails to appoint a designated individual, the IRS may determine that the entity partnership representative designation is not in effect under paragraph (f) of this section.

(4) *Capacity to act.* For the purposes of this section, a person does not have the capacity to act, and is therefore ineligible to serve as a partnership representative or designated individual, as applicable, under this paragraph (b), in the event of—

(i) Death;

(ii) A court order adjudicating that the person does not have the capacity to manage his or her person or estate;

(iii) A court order enjoining the person from acting on behalf of the partnership or the entity partnership representative;

(iv) Incarceration;

(v) Liquidation or dissolution under state law in the case of an entity partnership representative; or

(vi) Any similar situation where the IRS reasonably determines the person may no longer have the capacity to act.

(c) *Designation of partnership representative by the partnership*—(1) *In general.* The partnership must designate a partnership representative separately for each taxable year. The designation of a partnership representative for one taxable year is effective only for the taxable year for which it is made.

(2) *Designation.* Except in the case of designation of a partnership representative after an event described in paragraph (d) of this section (regarding resignation), paragraph (e) of this section (regarding revocation by the partnership), or paragraph (f) of this section (regarding designation made by the IRS), or as prescribed in forms, instructions, and other guidance, designation of a partnership representative must be made on the partnership return for the partnership taxable year to which the designation applies and must include all of the information required by forms, instructions, and other guidance, including information about the designated individual if the provisions of paragraph (b)(3) of this section apply. The designation of the partnership representative (and the appointment of the designated individual, if applicable) is effective on the date that the partnership return is filed.

(3) *Example.* The following example illustrates the rules of this paragraph (c).

Example. Partnership properly designates A as its partnership representative for taxable year 2018 on its 2018 partnership return. Partnership designates B as its partnership representative for taxable year 2021 on its 2021 partnership return. In 2022, the IRS

mails Partnership a notice of administrative proceeding under section 6231 with respect to Partnership's 2018 taxable year. A is the partnership representative for the 2018 partnership taxable year, notwithstanding the designation of B as partnership representative for the 2021 partnership taxable year.

(d) *Resignation of the partnership representative*—(1) *In general.* A partnership representative may resign by notifying the partnership and the IRS in writing of the resignation. The notification to the IRS, submitted in accordance with applicable forms and instructions prescribed by the IRS, may include a designation of a successor partnership representative for the partnership taxable year for which designation of the resigning partnership representative was in effect. A resignation and designation of the successor partnership representative, if applicable, is effective 30 days from the date on which the IRS receives the written notification. If the resigning partnership representative designates a successor, the IRS will notify the partnership, the resigning partnership representative, and the newly designated partnership representative when the IRS receives the written notification. If the resigning partnership representative does not designate a successor, the IRS will determine there is no designation in effect in accordance with paragraph (f) of this section, and the partnership will have the opportunity to designate a successor partnership representative, or the IRS will designate a successor, as described in paragraph (f)(1) of this section. Failure to satisfy the requirements of this paragraph (d) is treated as if no resignation has occurred and the partnership representative designation remains in effect until the designation is terminated either by valid resignation (as described in this paragraph (d)), a valid revocation of the designation by the partnership (as described in paragraph (e) of this section), or a determination by the IRS that the designation is not in effect (as described in paragraph (f) of this section).

(2) *Time for resignation.* A partnership representative may resign simultaneously with the filing of a valid administrative adjustment request (AAR) in accordance with section 6227 and the regulations thereunder for a partnership taxable year, after receipt of a notice of administrative proceeding for the partnership taxable year, or at such other time as prescribed by the IRS in other guidance. If a partnership representative resigns in connection with the filing of an AAR, the partnership representative must designate a successor partnership representative. A partnership may not use the form prescribed by the IRS for filing an AAR solely for the purposes of allowing the partnership representative to resign.

(3) *Special rule for resignation of designated individual.* A designated individual may resign by notifying the partnership, partnership representative, and the IRS in writing of the resignation subject to the time of resignation restrictions described in paragraph (b)(2) of this section as if the designated individual were a partnership representative. The notification to the IRS, submitted in accordance with applicable forms and instructions prescribed by the IRS, may, but is not required to, include an appointment of a successor designated individual for the partnership taxable year for which the designated individual was appointed. The resignation (and appointment of the successor designated individual, if applicable) is effective 30 days from the date on which the IRS receives the written notification. If the resigning designated individual appoints a successor, the IRS will notify the partnership, the partnership representative, the resigning designated individual, and any newly appointed designated individual when the IRS receives the written notification. If the resigning designated individual does not appoint a successor, the IRS will determine there is no designation in effect in accordance with paragraph (f) of this section, and the partnership will have the opportunity to designate a partnership representative, including the appointment of a designated individual, or the IRS will designate a partnership representative, as described in paragraph (f)(1) of this section.

(e) *Revocation of designation*—(1) *In general.* The partnership may revoke the designation of the partnership representative for a partnership taxable year by notifying the partnership representative and the IRS in writing. The notification to the IRS, submitted in accordance with applicable forms and instructions prescribed by the IRS, must satisfy the requirements of paragraph (e)(3)(iii) of this section and must include designation of a successor partnership representative for the partnership taxable year for which designation of the partnership representative was in effect. The revocation and designation of a new partnership representative is effective 30 days from the date on which the IRS receives the written notification. The IRS will notify the partnership and any partnership representative whose designation is being revoked when the IRS receives a revocation made in accordance with paragraph (e)(2) of this section. Failure to satisfy the requirements of this section is treated as if no revocation has occurred and the partnership representative designation remains in effect until the designation is terminated either by valid resignation (as described in paragraph (d) of this section), valid revocation of the designation by the partnership (as described in this paragraph (e)), or a determination by the IRS that the designation is not in effect (as described in paragraph (f) of this section).

(2) *Time for revocation*—(i) *Revocation during an administrative proceeding.* Except as provided in paragraph (e)(2)(ii) of this section or in other guidance prescribed by the IRS, a partnership may not revoke the designation of the partnership representative before the IRS mails a notice of administrative proceeding pursuant to section 6231 and the regulations thereunder. Upon receipt of a notice of administrative proceeding, the partnership may revoke the partnership representative designation.

(ii) *Revocation with an AAR.* The partnership may revoke a designation of a partnership representative for the taxable year when the partnership files a valid AAR in accordance with section 6227 and the regulations thereunder for a partnership taxable year. The revocation of the partnership representative and the designation of the new partnership representative is effective 30 days from the date the partnership files a valid AAR. A partnership may not use the form prescribed by the IRS for filing an AAR solely for the purpose of revoking the designation of a partnership representative.

(3) *Partners who may sign revocation*—(i) *General partner and certain partners in limited circumstances.* A revocation must be signed by a person who was a general partner at the close of the taxable year for which the partnership representative designation is in effect as shown on the partnership return for that taxable year. A partner in the partnership during the taxable year who was not a general partner eligible to sign the revocation may sign the revocation only if, at the time the revocation is signed, each general partner eligible to sign the revocation is no longer a partner or no longer has the capacity to act (as described under paragraphs (b)(4)(i) through (v) of this section as if the general partner was a partnership representative or designated individual). See paragraph (e)(3)(ii) of this section

for the rules applicable to limited liability companies.

(ii) *Limited liability companies*—(A) *In general.* Solely for the purposes of applying this paragraph (e)(3) to a limited liability company (LLC) (as defined in paragraph (e)(3)(ii)(B)(*1*) of this section), a member-manager of an LLC is treated as a general partner, and a member of an LLC who is not a member-manager is treated as a partner other than a general partner.

(B) *Definitions.* For purposes of this paragraph (e)(3)(ii), the following terms have the following meaning:

(*1*) *LLC.* An *LLC* means an organization formed under a state or foreign law that allows the limitation of the liability of all members for the organization's debts and other obligations within the meaning of § 301.7701–3(b)(2)(ii) and that is classified as a partnership for Federal tax purposes.

(*2*) *Member.* A *member* means any person who owns an interest in an LLC.

(*3*) *Member-manager.* A *member-manager* means a member of an LLC who, alone or together with others, is vested with the continuing exclusive authority to make the management decisions necessary to conduct the business for which the organization was formed. Generally, an LLC statute may permit the LLC to choose management by one or more managers (whether or not members) or by all of the members. If there are no elected or designated member-managers of the LLC, each member will be treated as a member-manager for purposes of this paragraph (e)(3)(ii)(B)(*3*).

(iii) *Form of the revocation.* The notification of revocation described in paragraph (e)(1) of this section must include the items described in this paragraph (e)(3)(iii). A notification of revocation described in paragraph (e)(1) of this section that does not include each of the following items is not a valid revocation:

(A) A certification under penalties of perjury that the person signing the form—

(*1*) Is a partner described in paragraph (e)(3)(i) of this section (or in the case of an LLC, a person described in paragraph (e)(3)(ii) of this section) authorized by the partnership to revoke the designation of the partnership representative; and

(*2*) Has provided a copy of the revocation to the partnership and to the partnership representative whose designation is being revoked;

(B) A statement that the person signing the form is revoking the designation of the partnership representative; and

(C) A subsequent designation of a partnership representative in accordance with forms and instructions prescribed by the IRS.

(4) *Partnership representative designated by the IRS.* If a partnership representative is designated by the IRS pursuant to paragraph (f)(5) of this section, the partnership may only revoke that designation with the permission of the IRS.

(5) *Multiple revocations.* If within a 90-day period the IRS receives more than one revocation of a designation of a partnership representative for the same partnership taxable year signed by different persons, the IRS may determine that a designation is not in effect under paragraph (f) of this section.

(6) *Examples.* The following example illustrates the rules of this paragraph (e).

Example 1. Partnership properly designates B as partnership representative for its 2018 taxable year on its 2018 partnership return. In 2020, Partnership mails written notification to the IRS to revoke designation of B as its partnership representative for Partnership's 2018 taxable year. The revocation is not made in connection with an AAR for Partnership's 2018 taxable year, and the IRS has not mailed Partnership a notice of administrative proceeding under section 6231 with respect to Partnership's 2018 taxable year. Because the revocation was not made during a time permitted under paragraph (e)(2) of this section, the revocation is not effective and B remains the partnership representative for Partnership's 2018 taxable year.

Example 2. During an administrative proceeding with respect to Partnership's 2018 taxable year, Partnership provides IRS with written notification to revoke its designation of B as its partnership representative for the 2018 taxable year. The written notification does not include a designation of a new partnership representative for Partnership's 2018 taxable year. Because the revocation does not include a designation of a new partnership representative as required under paragraph (e)(1) of this section, the revocation is not effective and B remains the partnership representative for Partnership's 2018 taxable year.

(f) *Designation of the partnership representative by the IRS*—(1) *In general.* If the IRS determines that a designation of a partnership representative is not in effect for a partnership taxable year in accordance with paragraph (f)(2) of this section, the IRS will notify the partnership and the most recent partnership representative for that partnership taxable year that a partnership designation is not in effect and provide the partnership with the opportunity to designate a successor partnership representative that is eligible under paragraph (b) of this section. The determination that a designation is not in effect is effective on the date the IRS mails the notification. Except as described in paragraph (f)(4) of this section, the partnership may designate a successor partnership representative within 30 days of the date of notification. If the partnership does not designate a successor within 30 days from the date of notification, the IRS will designate a partnership representative in accordance with paragraph (f)(5) of this section. A partnership representative designation made in accordance with paragraphs (c), (d), (e), or (f) of this section remains in effect until the IRS determines the designation is not in effect.

(2) *IRS determination that partnership representative designation not in effect.* The IRS may determine that the partnership representative designation is not in effect in the case of multiple revocations as described in paragraph (e)(5) of this section or if the IRS determines that—

(i) the partnership failed to make a valid designation under paragraph (c) of this section;

(ii) the partnership representative or the designated individual does not have substantial presence (as described in paragraph (b)(2) of this section, as applicable) or does not have capacity to act (as described in paragraph (b)(4) of this section);

(iii) the partnership failed to appoint a designated individual (as described in paragraph (b)(3) of this section, as applicable); or

(iv) no successor designation or appointment was made in the case of a resignation without a designation or appointment of a successor as described in paragraphs (d)(1) and (3) of this section.

(3) *Form of successor partnership representative designation.* The partnership must designate the successor partnership representative in accordance with applicable forms and instructions prescribed by the IRS. If the partnership fails to provide all information required under the forms and instructions, the partnership will have failed to designate a successor partnership representative.

(4) *No opportunity for designation by the partnership in the case of multiple revocations.* In the event that the IRS determines a partnership representative designation is not in effect due to multiple revocations as described in paragraph (e)(5) of this section, the partnership will not be given an opportunity to designate the successor partnership representative prior to the designation by the IRS as described in paragraph (f)(5) of this section.

(5) *Designation by the IRS*—(i) *In general.* The IRS designates a partnership representative by notifying the partnership of the name, address, and telephone number of the new partnership representative. The designation of a partnership representative by the IRS is effective on the date on which the IRS mails the notice of the designation to the partnership. The IRS will also mail a copy of the notice to the new partnership representative.

(ii) *Factors considered when partnership representative designated by the IRS.* The IRS may designate any person to be the partnership representative. In addition to other relevant factors, the IRS will consider whether there is a suitable partner of the partnership, either from the reviewed year (as defined in § 301.6241–1(a)(8)) or at the time the partnership representative designation is made. The IRS may consider the following factors when designating a person as the partnership representative:

(A) The views of the partners having a majority interest in the partnership regarding the designation;

(B) The general knowledge of the person in tax matters and the administrative operation of the partnership;

(C) The person's access to the books and records of the partnership;

(D) Whether the person is a United States person (within the meaning of section 7701(a)(30)).

(6) *Examples.* The following examples illustrate the rules of this paragraph (f).

Example 1. The IRS determines that Partnership has designated a partnership representative that does not have substantial presence in the United States as defined in paragraph (b)(2) of this section. The IRS may determine that the designation is not in effect and designate a new partnership representative after following the procedures in paragraph (f) of this section.

Example 2. Partnership designates as its partnership representative a corporation but fails to appoint a designated individual to act on behalf of the corporation as required under paragraph (b)(3) of this section. The IRS may determine that the partnership representative designation is not in effect and may designate a new partnership representative after following the procedures in paragraph (f) of this section.

Example 3. The partnership representative resigns pursuant to paragraph (d) of this section without designating a new partnership representative. The IRS mails Partnership a notification informing Partnership that no designation is in effect and that the IRS plans to designate a new partnership representative. Partnership fails to respond within 30 days of the IRS's notification. The IRS will designate a partnership representative pursuant to paragraph (f) of this section.

Example 4. Partnership designated on its partnership return a partnership representative, PR1. After Partnership received a notice of administrative proceeding, general partner, GP1, signs and submits to the IRS the form described in paragraph (e)(3) of this section requesting the revocation of the current partnership representative PR1 and the designation of a successor partnership representative, PR2. Sixty days later, general partner, GP2, signs and submits a form described in paragraph (e)(3) of this section requesting the revocation of the newly appointed PR2 and the designation of PR3 as the new partnership representative. The IRS may accept GP2's revocation and subsequent designation of PR3 or, because GP2's revocation was within 90 days of GP1's revocation, the IRS may determine, pursuant to paragraphs (e)(5) and (f)(2) of this section that there is no designation in effect due to multiple revocations. The IRS may then designate a new partnership representative pursuant to paragraph (f) of this section without allowing the partnership an opportunity for additional, possibly conflicting, designations.

(g) *Reliance on forms required by this section.* The IRS may rely on any form or other document filed or submitted under this section as evidence of the designation, resignation, or revocation on such form and as evidence of the date on which such form was filed or submitted relating to a designation, resignation, or revocation.

(h) *Effective date*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22T in effect.* This section applies to any partnership taxable years beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22T is in effect.

■ **Par. 6.** Section 301.6223–2 is added to read as follows:

§ 301.6223–2 Binding effect of actions of the partnership and partnership representative.

(a) *Binding nature of actions by partnership and final decision in a partnership proceeding.* The actions of the partnership and the partnership representative taken under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) and any final decision in a proceeding brought under subchapter C of chapter 63 with respect to the partnership bind the partnership, all partners of the partnership (including partnership-partners as defined in § 301.6241–1(a)(7) that have a valid election under section 6221(b) in effect for any taxable year that overlaps with the taxable year of the partnership), and any other person whose tax liability is determined in whole or in part by taking into account directly or indirectly adjustments determined under subchapter C of chapter 63 (for example, indirect partners as defined in § 301.6241–1(a)(4)). For instance, a settlement agreement entered into by the partnership representative on behalf of the partnership, a notice of final partnership adjustment with respect to the partnership that is not contested by the partnership or the partnership representative, or the final decision of the court with respect to the partnership if the notice of final partnership adjustment is contested, binds all persons described in the preceding sentence.

(b) *Actions by the partnership representative before termination of designation.* The termination of the designation of the partnership representative under § 301.6223–1 does not affect the validity of any action taken by that partnership representative during the period prior to termination when the designation was in effect. For example, if a partnership representative properly designated under § 301.6223–1 consented to an extension of the period for adjustments under section 6235(b), that extension remains valid even after termination of the designation of that partnership representative.

(c) *Partnership representative has the sole authority to act on behalf of the partnership*—(1) *In general.* The partnership representative has the sole authority to act on behalf of the partnership for all purposes under subchapter C of chapter 63. In the case of an entity partnership representative, the designated individual has the sole authority to act on behalf of the partnership representative and the partnership. Except for a partner that is the partnership representative or the designated individual, no partner, or any other person, may participate in an examination or other proceeding involving the partnership under subchapter C of chapter 63 without the permission of the IRS. No state law, partnership agreement, or other document or agreement may limit the authority of the partnership representative or the designated individual as described in section 6223 and this section.

(2) *Designation provides authority to bind the partnership*—(i) *Partnership representative.* A partnership representative, by virtue of being designated under section 6223 and § 301.6223–1, has the authority to bind the partnership for all purposes under subchapter C of chapter 63.

(ii) *Designated individual.* A designated individual described under § 301.6223–1(b)(3)(i) by virtue of being appointed as part of the designation of the partnership representative under § 301.6223–1, has the sole authority to bind the partnership representative and the partnership for all purposes under subchapter C of chapter 63.

(d) *Examples.* The following examples illustrate the rules of this section.

Example 1. Partnership designates a partnership representative, PR, on its partnership return for 2020. PR is a partner in Partnership. The partnership agreement for Partnership includes a clause that requires PR to consult with an identified management group of partners in Partnership before taking any action with respect to an administrative proceeding before the IRS. The IRS initiates an administrative proceeding with respect to Partnership's 2020 taxable year. During the course of the administrative proceeding, PR consents to an extension of the period for adjustments under section 6235(b) allowing additional time for the IRS to mail a final notice of partnership adjustment. PR failed to consult with the management group of partners prior to agreeing to this extension of time. PR's consent provided to the IRS to extend the time period is valid and binding on Partnership because, pursuant to section 6223, PR, as the designated partnership representative, has authority to bind Partnership and all its partners.

Example 2. Partnership designates a partnership representative, PR, on its partnership return for 2020. PR is not a partner in Partnership. During an administrative proceeding with respect to Partnership's 2020 taxable year, PR agrees to certain IRS adjustments and within 45 days after the issuance of the notice of final partnership adjustment (FPA), elects the alternative to payment of the imputed underpayment under section 6226 and the regulations thereunder. Certain partners in Partnership challenge the actions taken by PR during the administrative proceeding and the validity of the section 6226 statements furnished to those partners, alleging that PR was never authorized to act on behalf of Partnership under state law or the partnership agreement. Because PR was designated by Partnership as the partnership representative, under section 6223 and this section, PR was authorized to act on behalf of Partnership for all purposes under subchapter C of chapter 63, and the IRS may rely on that designation as conclusive evidence of PR's authority to act on behalf of Partnership.

Example 3. Partnership designates an entity partnership representative, EPR, and appoints an individual A, as the designated individual, on its partnership return for 2020. EPR is a C corporation. A is unaffiliated with EPR and is not an officer, director, or employee of EPR. During an administrative proceeding with respect to Partnership's 2020 taxable year, A, acting for EPR, agrees to an extension of the period for adjustments under section 6235(b). The IRS mails an FPA within the extended period for adjustments as agreed to by EPR, but after the expiration of the period had no agreement been entered into. Partnership challenges the FPA as untimely, alleging that A was not authorized under state law to act on behalf of EPR and thus the extension agreement was invalid. Because A was appointed by the partnership as the designated individual to act on behalf of EPR, A was authorized to act on behalf of EPR for all purposes under subchapter C of chapter 63, and the IRS may rely on that identification as conclusive evidence of A's authority to act on behalf of EPR and Partnership.

Example 4. The partnership representative, PR, consents to an extension of the period for adjustment under section 6235(b) for Partnership for the partnership taxable year. After signing the consent, PR resigns as partnership representative in accordance with § 301.6223–1. The extension of the period under section 6235(b) remains valid even after PR resigns.

Example 5. Partnership designates a partnership representative who is unable to meet with the IRS in person in the United States as required by § 301.6223–1(b). Although the partnership representative does not have substantial presence in the United States within the meaning of § 301.6223–1(b)(2), until a termination occurs under § 301.6223–1(d) or (e) or the IRS determines the partnership representative is ineligible under § 301.6223–1(b) and terminates the designation under § 301.6223–1(f), the partnership representative designation remains in effect, and Partnership and all its partners are bound by the actions of the partnership representative.

(e) *Applicability date*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22T in effect.* This section applies to any partnership taxable years beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22T is in effect.

■ **Par. 7.** Section 301.6225–1 is added to read as follows:

§ 301.6225–1 Partnership Adjustment by the Internal Revenue Service.

(a) *Imputed underpayment paid by partnership in adjustment year*—(1) *In general.* Any imputed underpayment (as determined in accordance with paragraph (c) of this section) with respect to any partnership adjustment (as defined in § 301.6241–1(a)(6)) for any partnership taxable year must be paid by the partnership in the same manner as if it were a tax imposed for the adjustment year (as defined in § 301.6241–1(a)(1)). The notice of final partnership adjustment under section 6231 will include the amount of any imputed underpayment, as modified under § 301.6225–2 if applicable, unless the partnership waives its right to such notice under section 6232(d)(2). For the alternative to payment of the imputed underpayment by the partnership, see § 301.6226–1. For assessment, collection, and payment of an imputed underpayment, see section 6232 and the regulations thereunder. If a partnership pays an imputed underpayment (as determined in accordance with paragraph (c) of this section), the partnership's expenditure for the imputed underpayment and the adjustments that result in the imputed underpayment are taken into account by the partnership in accordance with § 301.6241–4. For interest and penalties with respect to an imputed underpayment, see section 6233.

(2) *All preferences, limitations, restrictions, and conventions apply.* For purposes of determining the imputed underpayment, adjustments, netting of adjustments, and calculations or determinations of any amounts under this section, unless the Internal Revenue Service (IRS) in its discretion determines otherwise, all applicable preferences, restrictions, limitations, and conventions will be taken into account to disallow netting of adjustments, where applicable, or to disallow or limit, as applicable, any adjustment that potentially results in an increase of loss, deduction or credit, or decrease of income or gain, and as if the adjusted item was originally taken into account by the partnership or the partners, as applicable, in the manner most beneficial to the partnership or partners. For instance, if the adjustment is a reduction of qualified research expenses, the amount of the imputed underpayment is determined as if all partners claimed a credit with respect to their allocable portion of such expenses under section 41, rather than a deduction under section 174. See § 301.6225–2 for modifications of the imputed underpayment that may be requested by the partnership.

(3) *Imputed underpayment set forth in notice of proposed partnership adjustment.* An imputed underpayment set forth in a notice of proposed partnership adjustment (NOPPA) under section 6231 is determined under paragraph (c)(1) of this section without regard to any modification under § 301.6225–2. Modifications under § 301.6225–2, if allowed by the IRS, may reduce the imputed underpayment determined under paragraph (c)(1) of this section. Only the partnership adjustments set forth in a NOPPA are taken into account for purposes determining the imputed underpayment under this section and any modification under § 301.6225–2.

(b) *Treatment of an adjustment that does not result in an imputed underpayment.* Any adjustment that does not result in an imputed underpayment (as described in paragraph (c)(2) of this section) is taken into account by the partnership in the adjustment year in accordance with § 301.6225–3.

(c) *Calculation of an imputed underpayment*—(1) *In general.* In the case of any partnership adjustment by the IRS, the imputed underpayment required to be paid by the partnership under paragraph (a) of this section is calculated by—

(i) Multiplying the total netted partnership adjustment (as determined under paragraph (c)(3) of this section) by the highest rate of Federal income tax in effect for the reviewed year (as defined in § 301.6241–1(a)(8)) under section 1 or 11, and

(ii) Increasing or decreasing the product in paragraph (c)(1)(i) of this section by the net increase or net decrease in credits resulting from partnership adjustments (as determined under paragraph (d) of this section).

(2) *Partnership adjustments that do not result in an imputed underpayment.* A partnership adjustment does not result in an imputed underpayment if—

(i) The adjustment relates to a distributive share reallocation that is disregarded under paragraph (d)(2)(ii) of this section;

(ii) After grouping and netting the adjustments as described in paragraph (d) of this section, the result of netting any grouping or subgrouping is a net non-positive adjustment (as described in paragraph (d)(3) of this section); or

(iii) The calculation under paragraph (c)(1) of this section results in an amount that is zero or less than zero.

(3) *Calculation of the total netted partnership adjustment.* For purposes of determining whether there is an imputed underpayment under paragraph (c)(1) of this section, the *total netted partnership adjustment* is—

(i) The sum of all net positive adjustments in the residual grouping as determined in accordance with paragraph (d)(2)(v) of this section, plus

(ii) The sum of all net positive adjustments in the reallocation grouping as determined in accordance with paragraph (d)(2)(ii) of this section.

(4) *No netting of adjustments between taxable years.* Each imputed underpayment is calculated based on adjustments solely with respect to a single taxable year. Adjustments from one taxable year may not be netted against adjustments from another taxable year.

(d) *Grouping and netting of partnership adjustments*—(1) *In general.* For purposes of calculating an imputed underpayment under paragraph (c) of this section, partnership adjustments are grouped according to paragraph (d)(2) of this section and the partnership adjustments comprising each grouping are netted in accordance with paragraph (d)(3) of this section. Within each grouping, partnership adjustments are further grouped into subgroupings based on preferences, limitations, restrictions, and conventions, such as source, character, holding period, or restrictions under the Internal Revenue Code (Code) applicable to such items.

(2) *Groupings*—(i) *In general.* To calculate an imputed underpayment under paragraph (c) of this section, partnership adjustments are grouped into categories in the following order—

(A) First, each partnership adjustment that reallocates the distributive share of an item forms its own grouping which is taken into account in accordance with paragraph (d)(2)(ii) of this section (reallocation grouping);

(B) Second, adjustments to credits are taken into account in a grouping under paragraph (d)(2)(iii) of this section (credit grouping);

(C) Third, adjustments to creditable expenditures are taken into account in a grouping under paragraph (d)(2)(iv) of this section (creditable expenditure grouping); and

(D) Fourth, the remaining adjustments are taken into account in the residual grouping under paragraph (d)(2)(v) of this section (residual grouping).

(ii) *Reallocation grouping.* A partnership adjustment that reallocates the distributive share of an item from one or more partners to one or more other partners, or a partnership adjustment that allocates an item to a particular partner or partners, is taken into account in calculating the imputed underpayment under paragraph (c) of this section by disregarding net decreases to items of income or gain and net increases to items of deduction, loss, or credit. Each adjustment to an item or to a distributive share of an item that allocates to or reallocates to and from a particular partner or partners is a separate subgrouping for purposes of the netting rules in paragraph (d)(3) of this section. For instance, if the reallocation adjustment reallocates an item of deduction from one partner to another partner, the decrease in the deduction with respect to the first partner is in a separate subgrouping from the increase in deduction with respect to the second partner. If a particular partner or group of partners has more than one adjustment allocable to it within the reallocation grouping, such adjustments may be combined or further divided into additional subgroupings according to the principles of paragraphs (d)(1) and (d)(2)(v) of this section and netted according to paragraph (d)(3) of this section. After subgroupings are netted under paragraph (d)(3) of this section, any net non-positive adjustments (as defined in paragraph (d)(3)(ii)(C) of this section) are disregarded. Net non-positive adjustments disregarded under this paragraph (d)(2)(ii) are adjustments that do not result in an imputed underpayment under paragraph (c)(2) of this section. Net positive adjustments are included in the calculation of the total netted partnership adjustment under paragraph (c)(3) of this section if the net positive adjustments would otherwise be a part of the residual grouping described in paragraph (d)(2)(v) of this section. Net positive adjustments to credits are included in the credit grouping described in paragraph (d)(2)(iii) of this section.

(iii) *Credit grouping.* The credit grouping includes all adjustments to items that are claimed or could be claimed by a partnership as a credit on the partnership's return.

(iv) *Creditable expenditure grouping.*—[Reserved]

(v) *Residual grouping.* Any partnership adjustment not described in paragraph (d)(2)(ii), (d)(2)(iii), or (d)(2)(iv) of this section is included in the residual grouping described in this paragraph (d)(2)(v) and is further divided into subgroupings according to any limitations or restrictions imposed on the items to which the adjustment relates under the Code. Each subgrouping in the residual grouping is created to account for limitations or restrictions such as character or holding period.

(3) *Netting adjustments within each grouping or subgrouping*—(i) *In general.* The partnership adjustments in a grouping or subgrouping described in paragraph (d)(2) of this section are netted together within each grouping or subgrouping to determine whether there is a net positive adjustment or a net non-positive adjustment (as defined in paragraph (d)(3)(ii)(B) and (C) of this section) for that grouping or subgrouping. Adjustments in one grouping or subgrouping are not netted against adjustments in any other grouping or subgrouping. For instance, under paragraph (d)(2) of this section, adjustments to ordinary income and loss items are grouped together separately from capital gain and loss items. Therefore under this paragraph (d)(3)(i), the items in the ordinary grouping are

not netted against the items in the capital grouping.

(ii) *Only net positive adjustments taken into account in calculating the total netted partnership adjustment*—(A) *In general.* Only adjustments to items resulting in a net positive adjustment (as defined in paragraph (d)(3)(ii)(B) of this section) for a grouping or subgrouping are taken into account in calculating the total netted partnership adjustment under paragraph (c)(3) of this section. A net non-positive adjustment (as defined in paragraph (d)(3)(ii)(C) of this section) for a grouping or subgrouping is disregarded for purposes of calculating the total netted partnership adjustment under paragraph (c)(3) of this section. The adjustments underlying a net non-positive adjustment that are disregarded under this paragraph (d)(3)(ii)(A) are adjustments that do not result in an imputed underpayment (as described in paragraph (c)(2) of this section).

(B) *Net positive adjustment.* A *net positive adjustment* results if the net amount of adjustments within a grouping or subgrouping under paragraph (d)(2) of this section (except with respect to the credit grouping described in paragraph (d)(2)(iii) of this section) is greater than zero.

(C) *Net non-positive adjustment.* A *net non-positive adjustment* is any net amount within a grouping or subgrouping described in paragraph (d)(2) of this section (except for the credit grouping under paragraph (d)(2)(iii) of this section) that is not a net positive adjustment (as defined in paragraph (d)(3)(ii)(B) of this section).

(iii) *Treatment of adjustments when netting.* For purposes of netting adjustments within a grouping—

(A) An increase in gain is treated as an increase in income;

(B) A decrease in gain is treated as a decrease in income;

(C) An increase in loss is treated as a decrease in income; and

(D) A decrease in a loss is treated as an increase in income.

(e) *Multiple imputed underpayments in a single administrative proceeding*—(1) *In general.* The IRS, in its discretion, may determine that partnership adjustments for the same partnership taxable year result in more than one imputed underpayment. The determination of whether there is more than one imputed underpayment for any partnership taxable year, and if so, which partnership adjustments are taken into account to calculate any particular imputed underpayment is based on the nature of the partnership adjustments. See § 301.6225–2(d)(6) for modification of the number and composition of imputed underpayments.

(2) *Types of imputed underpayments*—(i) *In general.* There are two types of imputed underpayments, a general imputed underpayment (defined in paragraph (e)(2)(ii) of this section) and a specific imputed underpayment (defined in paragraph (e)(2)(iii) of this section). Each type of imputed underpayment is separately calculated in accordance with the rules described in paragraphs (c) and (d) of this section.

(ii) *General imputed underpayment.* The general imputed underpayment is calculated based on all adjustments (other than adjustments that do not result in an imputed underpayment under paragraph (c)(2) of this section) that are not taken into account to determine a specific imputed underpayment under paragraph (e)(2)(iii) of this section. There is only one general imputed underpayment in any administrative proceeding. If there is one imputed underpayment in an administrative proceeding, it is a general imputed underpayment and may take into account adjustments described in paragraph (e)(2)(iii) of this section, if any.

(iii) *Specific imputed underpayment.* A specific imputed underpayment is an imputed underpayment with respect to adjustments to an item or items that were allocated to one partner or a group of partners that had the same or similar characteristics or that participated in the same or similar transaction. The IRS may designate more than one specific imputed underpayment with respect to any partnership taxable year. For instance, in a single partnership taxable year there may be a specific imputed underpayment with respect to adjustments related to a transaction affecting some, but not all, partners of the partnership (such as adjustments that are specially allocated to certain partners) and a second specific imputed underpayment with respect to adjustments resulting from a reallocation of a distributive share of income from one partner to another partner. The IRS may, in its discretion, determine that partnership adjustments that could be taken into account to calculate one or more specific imputed underpayments under this paragraph (e)(2)(iii) for a partnership taxable year are more appropriately taken into account in determining the general imputed underpayment for such taxable year. For instance, the IRS may determine that it is more appropriate to calculate only the general imputed underpayment if when calculating the specific imputed underpayment requested by the partnership, there is an increase in the number of the partnership adjustments that after netting result in net non-positive adjustments and are disregarded in calculating the specific imputed underpayment.

(f) *Examples.* The following examples illustrate the rules of this section. For purposes of these examples, each partnership is subject to the provisions of subchapter C of chapter 63 of the Code, each partnership and its partners are calendar year taxpayers, all partners are U.S. persons (unless otherwise stated), the highest rate of income tax in effect for all taxpayers is 40 percent for all relevant periods, and no partnership requests modification under § 301.6225–2.

Example 1. Partnership reports on its 2019 partnership return $100 of ordinary income and an ordinary deduction of <$70>. The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year and determines that ordinary income was $105 instead of $100 ($5 adjustment) and that the ordinary deduction was <$80> instead of <$70> (<$10> adjustment). Neither item is subject to special restrictions or limitations. Pursuant to paragraph (d) of this section, the adjustments are both in the residual grouping. The <$10> adjustment to the ordinary deduction is netted with the $5 adjustment to ordinary income because they are both ordinary in character and neither is subject to restrictions or limitations. After netting these adjustments, the total netted partnership adjustment is <$5>, which does not result in an imputed underpayment and therefore, the underlying adjustments (that is, the <$10> adjustment to the ordinary deduction and the $5 adjustment to ordinary income) are taken into account by Partnership in the adjustment year in accordance with § 301.6225–3.

Example 2. Partnership reports on its 2019 partnership return ordinary income of $300, long-term capital gain of $125, long-term capital loss of <$75>, a depreciation deduction of <$100>, and a tax credit that can be claimed by the partnership of $5. In an administrative proceeding with respect to the partnership's 2019 taxable year, the IRS determines ordinary income of $500 ($200 adjustment), long-term capital gain of $200 ($75 adjustment), long-term capital loss of <$25> ($50 adjustment), a depreciation deduction of <$70> ($30 adjustment), and a tax credit of $3 ($2 adjustment). Pursuant to paragraph (d) of this section, the tax credit is in the credit grouping under paragraph (d)(2)(iii) of this section. The remaining adjustments are part of the residual grouping under paragraph (d)(2)(v) of this section. The adjustment to ordinary income and the depreciation deduction are grouped together in an ordinary subgrouping within the residual grouping and netted with each other because they are both ordinary in character and neither is subject to differing restrictions or limitations. Pursuant to paragraph (d)(3)(iii) of this section, for purposes of netting, the decrease in the depreciation

deduction is treated as an increase in income of $30. Thus, $200 (adjustment to ordinary income) plus $30 (depreciation adjustment treated as increase in income) yields $230 of additional income in the ordinary subgrouping within the residual grouping. For similar reasons, the adjustments to long-term capital gain and long-term capital loss are grouped together in a long-term capital subgrouping within the residual grouping and netted with each other. For purposes of netting, the decrease in capital loss is treated as an increase in income of $50. Thus, $75 (long-term capital gain adjustment) plus $50 (long-term capital loss adjustment) yields $125 of additional income in the long-term capital subgrouping within the residual grouping. With respect to the ordinary subgrouping, the $230 adjustment to ordinary income is a net positive adjustment for that subgrouping and is added to the $125 of additional income in the long-term capital subgrouping, for a total netted partnership adjustment of $355. Under paragraph (c)(1)(i) of this section, the total netted partnership adjustment is multiplied by 40 percent (highest tax rate in effect), which results in $142. Under paragraph (c)(1)(ii) of this section, the $142 is increased by the $2 credit adjustment, resulting in an imputed underpayment of $144.

Example 3. Partnership reported on its 2019 partnership return long-term capital gain of $125 and long-term capital loss of <$75>. In an administrative proceeding with respect to Partnership's 2019 taxable year, the IRS determines the long-term capital gain should have been reported as ordinary income of $125, resulting in an increase in ordinary income of $125 ($125 adjustment) as well as a decrease of long-term capital gain of $125 (<$125> adjustment). Under paragraph (d)(2) of this section, these adjustments are part of the residual grouping, but are in a separate subgrouping because of their different character, that is, the increase in ordinary income is part of an ordinary subgrouping and the decrease in long-term capital gain is part of a long-term capital subgrouping, both within the residual grouping. There are no other adjustments for the 2019 taxable year. The $125 decrease in long-term capital gain is a net non-positive adjustment in the long-term capital subgrouping and as a result is an adjustment that does not result in an imputed underpayment. The $125 increase in ordinary income results in a net positive adjustment. Because the ordinary subgrouping is the only subgrouping resulting in a net positive adjustment, $125 is the total netted partnership adjustment. Under paragraph (c)(1)(i) of this section, $125 is multiplied by 40 percent resulting in an imputed underpayment of $50.

Example 4. Partnership reported a $100 deduction for certain expenses on its 2019 partnership return and a $100 deduction with respect to the same expenses on its 2020 partnership return. The IRS initiates an administrative proceeding with respect to Partnership's 2019 and 2020 taxable years and determines that Partnership improperly accelerated accrual of a portion of the expenses with respect to the deduction in 2019 that should have been taken into account in 2020. Therefore, for taxable year 2019, the IRS determines that Partnership should have reported a deduction of $75 with respect to the expenses ($25 adjustment) in 2019. However, for 2020, the IRS determines that Partnership should have reported a deduction of $125 with respect to these expenses (<$25> adjustment). There are no other adjustments for the 2019 and 2020 partnership taxable years. Pursuant to paragraph (c)(4) of this section, the adjustments for 2019 and 2020 are not netted with each other. The 2019 adjustment of $25 is multiplied by 40 percent resulting in an imputed underpayment of $10 for Partnership's 2019 taxable year. The $25 increase in the deduction for 2020 is an adjustment that does not result in an imputed underpayment. Therefore, there is no imputed underpayment for 2020.

Example 5. On its partnership return for the 2020 taxable year, Partnership reported ordinary income of $100 million and a capital gain of $50 million. Partnership had four equal partners during the 2020 tax year, all of whom were individuals. On its partnership return for the 2020 tax year, the capital gain was allocated to partner E and the ordinary income was allocated to all partners based on their interests in Partnership. In an administrative proceeding with respect to Partnership's 2020 taxable year, the IRS determines that for 2020 the capital gain allocated to E should have been $75 million instead of $50 million and that Partnership should have recognized an additional $10 million in ordinary income. In the NOPPA mailed by the IRS, the IRS may determine pursuant to paragraph (e) of this section that there is a general imputed underpayment with respect to the increase in ordinary income and a specific imputed underpayment with respect to the increase in capital gain specially allocated to E.

(g) *Applicability date*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22T in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22T is in effect.

■ **Par. 8.** Section 301.6225–2 is added to read as follows:

§ 301.6225–2 Modification of Imputed Underpayment.

(a) *Partnership may request modification of an imputed underpayment.* A partnership that has received a notice of proposed partnership adjustment (NOPPA) under section 6231 from the Internal Revenue Service (IRS) may request modification of a proposed imputed underpayment set forth in the NOPPA in accordance with this section and any forms, instructions, and other guidance prescribed by the IRS. The effect of modification on a proposed imputed underpayment is described in paragraph (b) of this section. Unless otherwise described in paragraph (d) of this section, a partnership may request any type of modification of an imputed underpayment described in paragraph (d) of this section in the time and manner described set forth in paragraph (c) of this section. A request for modification with respect to a partnership adjustment (as defined in § 301.6241–1(a)(6)) that does not result in an imputed underpayment (as described in § 301.6225–1(c)(2)(i) or (c)(2)(ii)) is only available if the partnership has a proposed imputed underpayment set forth in the NOPPA. Only the partnership representative may request modification of an imputed underpayment. See section 6223 and § 301.6223–2 for rules regarding the binding authority of the partnership representative.

(b) *Effect of modification*—(1) *In general.* A modification of an imputed underpayment under this section that is approved by the IRS may result in an increase or decrease in the amount of an imputed underpayment set forth in the NOPPA under section 6231. A modification may increase or decrease an imputed underpayment by affecting the extent to which adjustments factor into the calculation of the imputed underpayment (as described in paragraph (b)(2) of this section), by affecting the tax rate that is applied in calculating the imputed underpayment (as described in paragraph (b)(3) of this section), and to the extent provided in forms, instructions, or other guidance prescribed by the IRS (see paragraph (b)(4) of this section). If a partnership requests more than one modification, modifications that affect the extent to which an adjustment factors into the calculation of the imputed underpayment under paragraph (b)(2) of this section are taken into account before rate modifications under paragraph (b)(3) of this section are taken into account. A modification under this section has no effect on the amount of any partnership adjustment determined under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63).

(2) *Modifications that affect partnership adjustments for purposes of calculating the imputed underpayment.* Once approved by the IRS, a modification under paragraph (d)(2) of this section (amended returns), paragraph (d)(3) of this section (tax exempt status), paragraph (d)(5) of this section (specified passive activity losses), paragraph (d)(7) of this section (qualified investment entities), paragraph (d)(8) of this section (closing

agreements), or, if applicable, paragraph (d)(9) of this section (other modifications) affects the extent to which a partnership adjustment factors into the calculation of an imputed underpayment. Any partnership adjustment or portion of a partnership adjustment that is taken into account through one of the types of modification described in this paragraph (b)(2) is excluded from the calculation of the total netted partnership adjustment (as described in § 301.6225–1(c)(3)) if the adjustment or portion of the adjustment is part of the reallocation grouping (as described in § 301.6225–1(d)(2)(ii)) or the residual grouping (as described in § 301.6225–1(d)(2)(v)). Similarly, any partnership adjustment or portion of a partnership adjustment that is taken into account through one of the types of modification described in this paragraph (b)(2) is excluded from the credit grouping (as described in § 301.6225–1(d)(2)(iii)) if the adjustment or portion thereof is part of the credit grouping.

(3) *Modifications that affect the tax rate*—(i) *In general.* Once approved by the IRS, a modification under paragraph (d)(4) of this section (rate modification) reduces the tax rate applied in calculating the total netted partnership adjustment (as determined under § 301.6225–1(c)(3)) with respect to an imputed underpayment. Rate modification does not affect the extent to which partnership adjustments factor into the calculation of the imputed underpayment. A modification under paragraph (d)(9) of this section (other modifications) is treated as a rate modification under paragraph (b)(3) of this section if such modification affects the rate applied with respect to any partnership adjustment or portion of a partnership adjustment that makes up the total netted partnership adjustment with respect to an imputed underpayment.

(ii) *Determination of the imputed underpayment in the case of rate modification.* Except as described in paragraph (b)(3)(iv) of this section, the imputed underpayment in the case of rate modification under paragraph (d)(4) of this section is the sum of partnership adjustments not subject to rate reduction under paragraph (d)(4) of this section (as described in this paragraph (b)(3)(ii)), plus the *rate-modified netted partnership adjustment* determined under paragraph (b)(3)(iii) of this section, reduced or increased by any adjustments to credits (taking into account any modifications under this section). To determine the partnership adjustments not subject to rate reduction under paragraph (d)(4) of this section, multiply the partnership adjustments in the total netted partnership adjustment that are not subject to rate modification under paragraph (d)(4) of this section (including the portion of any partnership adjustment that remains after applying paragraph (b)(3)(iii) of this section) by the highest tax rate (as described in § 301.6225–1(c)(1)(i)).

(iii) *Calculation of rate-modified netted partnership adjustment in the case of a rate modification.* The *rate-modified netted partnership adjustment* is determined as follows—

(A) For each partnership adjustment in the total netted partnership adjustment that is subject to an approved rate modification under paragraph (d)(4) of this section, determine each reviewed year partner's (as defined in § 301.6241–1(a)(9)) or indirect partner's (as defined in § 301.6241–1(a)(4)) distributive share of the partnership adjustment subject to modification based on how each adjustment subject to rate modification would be properly allocated to such partner in the reviewed year (as defined in § 301.6241–1(a)(8)).

(B) Multiply the portion of each partnership adjustment determined under paragraph (b)(3)(iii)(A) of this section by the tax rate applicable to such portion under paragraph (d)(4) of this section.

(C) Add all of the amounts calculated under paragraph (b)(3)(iii)(B) of this section with respect to each partnership adjustment subject to an approved rate modification under paragraph (d)(4).

(iv) *Rate modification with respect to special allocations.* If an imputed underpayment results from adjustments with respect to more than one item and any reviewed year partner (or indirect partner) for whom modification is approved under paragraph (d)(4) of this section has a distributive share of such items that is not the same with respect to all such items, the imputed underpayment as modified under paragraph (d)(4) of this section is determined as described in paragraphs (b)(3)(ii) and (b)(3)(iii) of this section except that each partner's distributive share is determined based on the amount of net gain or loss to the partner that would have resulted if the partnership had sold all of its assets at their fair market value as of the close of the reviewed year appropriately adjusted to reflect any modification with respect to any partner (or indirect partner) that is approved under paragraphs (d)(2), (d)(3), (d)(5), (d)(6), (d)(7), (d)(8), and (d)(9) of this section. Upon request by the IRS, the partnership may be required to provide the partners' capital account calculation through the end of the reviewed year, a calculation of asset liquidation gain or loss, and any other information necessary to determine whether rate modification is appropriate, consistent with the rules of paragraph (c)(2) of this section.

(4) *Other modifications.* The effect of other modifications described in paragraph (d)(9) of this section may be described in forms, instructions, or other guidance prescribed by the IRS.

(c) *Time, form, and manner for requesting modification*—(1) *In general.* In addition to the requirements described in paragraph (d) of this section, a request for modification under this section must be submitted in accordance with the forms, instructions, and other guidance prescribed by the IRS and contain the information described in paragraph (c)(2) of this section. The partnership representative must submit any request for modification and all relevant information (as described in paragraph (c)(2) of this section and as required by paragraph (d) of this section) to the IRS within the time described in paragraph (c)(3) of this section. A request for modification, including a request by the IRS for information related to a request for modification, and the determination by the IRS to approve or not approve all or a portion of a request for modification, is part of the administrative proceeding with respect to the partnership under subchapter C of chapter 63 and does not constitute an examination, inspection, or other administrative proceeding with respect to any other person for purposes of section 7605(b).

(2) *Partnership must substantiate facts supporting a request for modification*—(i) *In general.* A partnership requesting modification under this section must substantiate the facts supporting such a request to the satisfaction of the IRS. The documents and other information necessary to substantiate a particular request for modification is based on the facts and circumstances of each request, as well as the type of modification requested under paragraph (d) of this section, and may include tax returns, partnership operating documents, certifications in the form and manner required with respect to the particular modification, and any other information necessary to support the requested modification. The IRS may, in forms, instructions, or other guidance, set forth procedures with respect to information and documents supporting the modification, including procedures to require particular documents or other information to

substantiate a particular type of modification, the manner for submitting documents and other information to the IRS, and recordkeeping requirements. The IRS will deny a request for modification if a partnership fails timely to provide information the IRS determines is necessary to substantiate a request for modification.

(ii) *Information to be furnished for any modification request.* In the case of any modification request, the partnership representative must furnish to the IRS a detailed description of the structure, allocations, ownership, and ownership changes, its partners, and, if relevant, any indirect partners for each taxable year relevant to the request for modification, as well as the partnership agreement as defined in § 1.704–1(b)(2)(ii)(h) of this chapter for each taxable year relevant to the modification request. In the case of any modification request with respect to an indirect partner, the partnership representative must provide to the IRS any information that the IRS may require relevant to any pass-through partner(s) (as defined in § 301.6241–1(a)(5)) through which the indirect partner holds its interest in the partnership. For instance, if the partnership requests modification with respect to an amended return filed by an indirect partner pursuant to paragraph (d)(2) of this section, the partnership representative may be required to provide to the IRS information that would have been required to have been filed by pass-through partners through which the indirect partner holds its interest in the partnership as if those pass-through partners had also filed their own amended returns.

(3) *Time for submitting modification request and information*—(i) *Modification request.* Unless an extension of time is granted by the IRS, all information required under this section with respect to a request for modification must be submitted to the IRS in the form and manner prescribed by the IRS on or before 270 days after the date the NOPPA is mailed.

(ii) *Extension of the 270-day period.* A partnership may request an extension, subject to consent by the IRS, of the 270-day period described in paragraph (c)(3)(i) of this section.

(iii) *Expiration of the 270-day period by agreement.* The 270-day period described in paragraph (c)(3)(ii) of this section expires as of the date the partnership representative and the IRS agree, in writing, to waive the 270-day period after the mailing of the NOPPA and before the IRS may issue a notice of final partnership adjustment. See section 6231(a) (flush language).

(4) *Approval of modification by the IRS.* After the IRS makes a determination as to whether a requested modification is accurate and appropriate, the IRS will notify the partnership representative in writing of the approval or denial, in whole or in part, of any request for modification. Notification of approval will be provided to the partnership representative only after receipt of all relevant information (including any supplemental information required by the IRS) and all necessary payments with respect to the particular modification requested.

(d) *Types of modification*—(1) *In general.* Except as otherwise described in this section, a partnership may request one type of modification or more than one type of modification described in paragraph (d) of this section.

(2) *Amended returns by partners*—(i) *In general.* A partnership may request a modification of an imputed underpayment based on an amended return filed by a reviewed year partner (or indirect partner) in accordance with paragraph (d)(2) of this section that takes into account all of the partnership adjustments properly allocable to such partner (or indirect partner). The partnership may not request an additional modification of any imputed underpayment for a partnership taxable year under this section with respect to any partner (or indirect partner) that files an amended return under paragraph (d)(2) of this section or with respect to any partnership adjustment allocated to such partner.

(ii) *Modification request based on amended return will not be approved without full payment.* A modification request under paragraph (d)(2) of this section will not be approved unless the partner (or indirect partner) filing the amended return has paid all tax, penalties, additions to tax, and interest due as a result of taking into account the adjustments in the first affected year (as defined in § 301.6226–(b)(2)) and all modification years (as described in paragraph (d)(2)(iv) of this section) before the expiration of the 270-day period described in paragraph (c)(3) of this section.

(iii) *Form and manner for filing amended returns.* A reviewed year partner (or indirect partner) must file all amended returns required for modification under paragraph (d)(2) of this section with the IRS. The IRS will not approve modification under paragraph (d)(2) of this section unless prior to the expiration of the 270-day period described in paragraph (c)(3) of this section, the partnership representative provides to the IRS in the form and manner prescribed by the IRS an affidavit from the partner (or indirect partner) signed under penalties of perjury by such partner that each amended return required to be filed under paragraph (d)(2) of this section has been filed (including the date on which such amended returns were filed) and that the full amount of tax, penalties, additions to tax, additional amounts, and interest was paid (including the date on which such amounts were paid).

(iv) *Modification approved only if amended returns for all taxable years are filed.* Modification under paragraph (d)(2) of this section will not be approved by the IRS unless a partner (or indirect partner) files an amended return for the first affected year and any modification year. A *modification year* is any taxable year with respect to which any tax attribute (as defined in § 301.6241–1(a)(10)) is affected by reason of taking the partner's allocable share of all partnership adjustments into account in the first affected year. A modification year may be a taxable year before or after the first affected year, depending on the effect on tax attributes of taking the partner's (or indirect partner's) share of the partnership adjustments into account in the first affected year.

(v) *Period of limitations must be open*—(A) *In general.* Except as described in paragraph (d)(2)(v)(B) of this section, the IRS will not accept modification under paragraph (d)(2) of this section with respect to any amended return if the period of limitations on assessment under section 6501 with respect to the partner's taxable year for which the amended return is being filed has expired. For modification with respect to years for which a partner's period of limitations on assessment under section 6501 has expired, see § 301.6225–2(d)(8) (regarding closing agreements).

(B) *Amended return claiming a refund.* An amended return filed under paragraph (d)(2) of this section claiming a refund may be filed after the expiration of period of limitations under section 6511, provided all partnership adjustments allocated to the partner (or indirect partner) filing the amended return are taken into account on such amended return, the only items reported on the amended return are items attributable to such partnership adjustments, and the partner files all required amended returns described in paragraph (d)(2)(iv) of this section.

(vi) *Amended returns for partnership adjustments that reallocate distributive shares.* Except as described in this

paragraph (d)(2)(vi), in the case of a partnership adjustment that reallocates the distributive share of any item from one partner to another, a modification under paragraph (d)(2) of this section will be approved only if all partners affected by such adjustment (affected partners) file amended returns in accordance with paragraph (d)(2) of this section. The IRS may determine that the requirements of this paragraph (d)(2)(vi) are satisfied if one or more affected partners take into account their allocable share of the adjustment through other modifications approved by the IRS. For instance, if, in the case where an adjustment reallocates a loss from one partner to another, one affected partner files an amended return taking into account the adjustment, and the other affected partner signs a closing agreement taking into account the adjustment, the IRS may determine that the requirements of this paragraph (d)(2)(vi) have been satisfied.

(vii) *Amended returns in the case of pass-through partners*—(A) *Pass-through partners may file amended returns.* A pass-through partner (or indirect partner that is a pass-through partner), including a partnership-partner (as defined in § 301.6241–1(a)(7)) (or indirect partner that is a partnership-partner) that has a valid election under section 6221(b) in effect for a partnership taxable year, may elect, solely for purposes of modification under paragraph (d)(2) of this section, to take into account its share of the partnership adjustments and determine and pay an amount calculated in the same manner as the safe harbor amount under § 301.6226–2(g) (except as described in paragraph (d)(2)(vii)(B) of this section).

(B) *Tax rate.* For purposes of calculating the payment amount for a pass-through partner under paragraph (d)(2)(vii)(A) of this section, instead of using the tax rate under section 6225(b)(1)(A), the tax rate is the rate determined by substituting the total net income of the pass-through partner for the taxable year (as adjusted) for taxable income in section 1(c) (determined without regard to section 1(h)).

(C) *Restrictions on upper-tier amended returns.* If modification is approved with respect to a pass-through partner (or indirect partner that is a pass-through partner) that takes its share of the partnership adjustments into account and pays any amount due under paragraph (d)(2)(vii)(A) of this section, the partnership may not request modification based on amended returns of direct and indirect partners of the pass-through partner (or indirect partner that is a pass-through partner).

(vii) *Limitations on amended returns*—(A) *In general.* A partner (or indirect partner) may not file an amended return with respect to any items related to partnership adjustments or an imputed underpayment except as described in paragraph (d)(2) of this section.

(B) *Further amended returns restricted.* If a partner files an amended return under paragraph (d)(2) of this section, such partner may not file a subsequent amended return without the permission of the IRS.

(3) *Tax-exempt partners*—(i) *In general.* A partnership may request modification of an imputed underpayment with respect to partnership adjustments that the partnership demonstrates to the satisfaction of the IRS are allocable to a reviewed year partner (or indirect partner) that would not owe tax by reason of its status as a tax-exempt entity (as defined in paragraph (d)(3)(ii) of this section) in the reviewed year (tax-exempt partner).

(ii) *Definition of tax-exempt entity.* For the purposes of paragraph (d)(3) of this section, the term *tax-exempt entity* means a person or entity defined in section 168(h)(2)(A), (C), or (D).

(iii) *Modification limited to portion of partnership adjustments for which tax-exempt partner not subject to tax.* Only the portion of the partnership adjustments properly allocated to a tax-exempt partner with respect to which the partner would not be subject to tax for the reviewed year (tax-exempt portion) may form the basis of a modification of the imputed underpayment under paragraph (d)(3) of this section. A modification under paragraph (d)(3) of this section will not be approved by the IRS unless the partnership provides documentation in accordance with paragraph (c)(2) of this section to support the tax-exempt partner's status and the tax-exempt portion of the partnership adjustment allocable to the tax-exempt partner.

(4) *Modification based on a rate of tax lower than the highest applicable tax rate.* A partnership may request modification based on a lower rate of tax with respect to adjustments that are attributable to a reviewed year partner (or indirect partner) that is a C corporation and adjustments with respect to capital gains or qualified dividends that are attributable to a reviewed year partner (or indirect partner) who is an individual. In no event may the lower rate determined under the preceding sentence be less than the highest rate in effect with respect to the type of income and taxpayer. For instance, with respect to adjustments that are attributable to a C corporation, the highest rate in effect for the reviewed year with respect to all C corporations would apply to that adjustment, regardless of the rate that would apply to the C corporation based on the amount of that C corporation's taxable income. For the purposes of this paragraph (d)(4), an S corporation is treated as an individual.

(5) *Certain passive losses of publicly traded partnerships*—(i) *In general.* In the case of a publicly traded partnership (as defined in section 469(k)(2)), the imputed underpayment is determined without regard to the portion thereof that the partnership demonstrates is attributable to a net decrease in a specified passive activity loss (as defined in paragraph (d)(5)(ii) of this section) which is allocable to a specified partner (as defined in paragraph (d)(5)(iii) of this section). The modification described in this paragraph (d)(5)(i) applies equally with respect to a publicly traded partnership that is subject to a proceeding under subchapter C of chapter 63 and where a portion of the imputed underpayment is attributable to a publicly traded partnership that is a partnership-partner (or indirect partner that is a partnership-partner).

(ii) *Specified passive activity loss.* A specified passive activity loss carryover amount for any specified partner of a publicly traded partnership is the lesser of the section 469(k) passive activity loss of that partner which is separately determined with respect to such partnership at the end of the partner's taxable year in which or with which the reviewed year of the partnership ends (reviewed year loss) or at the end of the partner's taxable year in which or with which the adjustment year (as defined in § 301.6241–1(a)(1)) of the partnership ends, reduced to the extent any such partner has utilized any portion of its reviewed year loss to offset income or gain relating to the ownership or disposition of its interest in such publicly traded partnership during either the adjustment year or any intervening year (as defined in § 301.6226–3(b)(3)).

(iii) *Specified partner.* A specified partner is a person that for each taxable year beginning with the partner's taxable year in which or with which the partnership reviewed year ends through the partner's taxable year in which or with which the partnership adjustment year ends satisfies the following three requirements—

(A) The person is a partner of a publicly traded partnership;

(B) The person is an individual, estate, trust, closely held C corporation, or personal service corporation; and

(C) The person has a specified passive activity loss with respect to the publicly traded partnership.

(iv) *Partner notification requirement to reduce passive losses.* If the IRS approves a modification request under paragraph (d)(5) of this section, the partnership must report, in accordance with forms, instructions, or other guidance prescribed by the IRS, to each specified partner the amount of that specified partner's reduction of its suspended passive loss carryovers at the end of the adjustment year to take into account the amount of any passive losses applied in connection with such modification request. The reduction in suspended passive loss carryovers as reported to a specified partner under this paragraph (d)(5)(iv) is a determination of the partnership under subchapter C of chapter 63 and is binding on the specified partners under section 6223 and the regulations thereunder.

(6) *Modification of the number and composition of imputed underpayments.* A partnership may request that the IRS include one or more partnership adjustments in one or more particular groupings or subgroupings (as described in § 301.6225–1(d)(2)) and may request that the IRS determine one or more specific imputed underpayments based on such groupings. For example, a partnership may request under this paragraph (d)(6) that one or more partnership adjustments taken into account to calculate an imputed underpayment be taken into account to calculate a different imputed underpayment.

(7) *Partnerships with partners that are ''qualified investment entities'' described in section 860*—(i) *In general.* A partnership may request a modification of an imputed underpayment based on the partnership adjustments allocated to a reviewed year partner (or indirect partner) where the modification is based on deficiency dividends distributed as described in section 860(f), by a partner that is a qualified investment entity (QIE) under section 860(b), which includes both a regulated investment company (RIC) and a real estate investment trust (REIT). Modification is available only to the extent that the deficiency dividends take into account adjustments described in § 301.6225–1 that are also adjustments within the meaning of section 860(d)(1) or (d)(2) (whichever applies).

(ii) *Documentation of deficiency dividend.* The partnership must provide documentation in accordance with paragraph (c) of this section of the ''determination'' described in section 860(e). Under section 860(e)(2), § 1.860–2(b)(1)(i) of this chapter, and paragraph (d)(8) of this section, a closing agreement entered into by the QIE partner pursuant to section 7121 and paragraph (d)(8) of this section is a determination described in section 860(e), and the date of the determination is the date in which the closing agreement is approved by the IRS. In addition, under section 860(e)(4), a determination also includes a Form 8927, *Determination Under Section 860(e)(4) by a Qualified Investment Entity,* properly completed and filed by the RIC or REIT pursuant to section 860(e)(4). To establish the date of the determination under section 860(e)(4) and the amount of deficiency dividends actually paid, the partnership must provide a copy of Form 976, *Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust* (Form 976), properly completed by or on behalf of the QIE pursuant to section 860(g), together with a copy of each of the required attachments for Form 976.

(8) *Partner closing agreements.* A partnership may request modification based on a closing agreement entered into by the IRS and any partner (or indirect partner) pursuant to section 7121, and, if approved by the IRS, the IRS will allow modification with respect to a partnership adjustment that is fully taken into account by such partner (or indirect partner) under a closing agreement and for which the required payment under the closing agreement is made. Generally, the IRS will not approve any additional modification under this section with respect to a partner (or indirect partner) to which a modification under this paragraph (d)(8) has been approved.

(9) *Other modifications.* A partnership may request a modification not described in paragraph (d) of this section and the IRS will determine whether such modification is accurate and appropriate in accordance with paragraph (c)(4) of this section. Additional types of modifications and the documentation necessary to substantiate such modifications may be set forth in forms, instructions, or other guidance prescribed by the IRS.

(e) *Examples.* The following examples illustrate the rules of this section. For purposes of these examples, each partnership is subject to the provisions of subchapter C of chapter 63, each partnership and its partners are calendar year taxpayers, all partners are U.S. persons (unless otherwise stated), the highest rate of income tax in effect for all taxpayers is 40 percent for all relevant periods, and no partnership requests modification under this section except as provided in the example.

Example 1. The IRS mails a NOPPA to Partnership for the 2019 partnership taxable year proposing a single partnership adjustment increasing ordinary income by $100, resulting in a $40 imputed underpayment ($100 multiplied by the 40 percent tax rate). Partner, A, held a 20 percent interest in Partnership during 2019. Partnership requests modification under paragraph (d)(2) of this section based on A filing an amended return for the 2019 taxable year taking into account $20 of the partnership adjustment and paying the tax and interest due attributable to A's share of the increased income and based on A's effective tax rate for 2019. No tax attribute in any other taxable year of A is affected by A taking into account A's share of the partnership adjustment for 2019. IRS approves the modification and the $20 increase in ordinary income allocable to A is therefore not included in the calculation of the total netted partnership adjustment (determined in accordance with § 301.6225–1). Partnership's total netted partnership adjustment is reduced to $80 ($100 adjustment less $20 taken into account by A), and the imputed underpayment is reduced to $32 (total netted partnership adjustment of $80 after modification multiplied by 40 percent).

Example 2. The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year. Partnership has two equal partners during its 2019 taxable year: An individual, A, and a partnership-partner, B. For 2019, B has two equal partners: A tax-exempt entity, C, and an individual, D. The IRS mails a NOPPA to Partnership for its 2019 taxable year showing a single partnership adjustment increasing Partnership's ordinary income by $100, resulting in a $40 imputed underpayment ($100 total netted partnership adjustment multiplied by 40 percent). Partnership requests modification under paragraph (d)(3) of this section with respect to B's partner, C, a tax-exempt entity. Partnership's partnership representative provides the IRS with documentation demonstrating to the IRS's satisfaction that C holds a 25 percent indirect interest in Partnership through its interest in B and that C is a tax-exempt entity defined in paragraph (d)(3)(ii) of this section that is not subject to tax with respect to its share of the partnership adjustment allocated to B which is $25 (50 percent × 50 percent × $100). IRS approves the modification and the $25 increase in ordinary income allocable to C is not included in the calculation of the total netted partnership adjustment (determined in accordance with § 301.6225–1). Partnership's total netted partnership adjustment is reduced to $75 ($100 adjustment less C's share of the adjustment, $25), and the imputed underpayment is reduced to $30 (total netted partnership adjustment of $75, after modification, multiplied by 40 percent).

Example 3. The facts are the same as in *Example 2* of this paragraph (e), except 30 percent of the $25 of the adjustment allocated to C is unrelated business taxable income (UBTI) as defined in section 512 with respect to which C would be subject to tax if taken into account by C. As a result, the modification under paragraph (d)(3) of this section with respect to C relates only to 70 percent of the $25 of ordinary income allocated to C that is not UBTI. Therefore, only a modification of $17.50 (70 percent multiplied by $25) of the total $100 partnership adjustment may be approved by the IRS and excluded when calculating the imputed underpayment for Partnership's 2019 taxable year. The total netted partnership adjustment (determined in accordance with § 301.6225–1) is reduced to $82.50 ($100 less $17.50), and the imputed underpayment is reduced to $33 (total netted partnership adjustment of $82.50, after modification, multiplied by 40 percent).

Example 4. The facts are the same as in *Example 2* of this paragraph (e), but assume that B filed an amended return taking its share of the partnership adjustments into account. B reports 50 percent of the partnership adjustments ($50) on its amended return, and B makes a payment pursuant to paragraph (d)(2)(ii) of this section. Partnership's total netted partnership adjustment is reduced by $50 (the amount taken into account by B). Partnership's total netted partnership adjustment (determined in accordance with § 301.6225–1) is $50, and the imputed underpayment, after modification, is $20.

Example 5. The facts are the same as in *Example 2* of this paragraph (e), except that in addition to the modification with respect to tax-exempt entity C which reduced the imputed underpayment by excluding from the calculation of the imputed underpayment $25 of the $100 partnership adjustment reflected in the NOPPA, individual D files an amended return for D's 2019 taxable year taking into account D's share of the partnership adjustment (50 percent of B's 50 percent interest in Partnership, or $25) and paying the additional tax and interest due in accordance with paragraph (d)(2) of this section. No tax attribute in any other taxable year of D is affected by D taking into account D's share of the partnership adjustment for 2019. IRS approves the modification and the $25 increase in ordinary income allocable to D is not included in the calculation of the total netted partnership adjustment (determined in accordance with § 301.6225–1). As a result, Partnership's total netted partnership adjustment is $50 ($100, less $25 allocable to C, less $25 taken into account by D), and the imputed underpayment, after modification, is $20.

Example 6. The IRS mails a NOPPA to Partnership for the 2019 taxable year proposing two partnership adjustments based on an IRS determination that two assets, asset X and asset Y, owned by Partnership were overvalued. The partnership adjustment with respect to asset X results in increased ordinary income of $75 and the partnership adjustment with respect to asset Y results in an increase in depreciation of $25, which under § 301.6225–1(d)(3)(iii) is treated as a $25 decrease in income. The total netted partnership adjustment (determined in accordance with § 301.6225–1) is $50 ($75–$25), resulting in an imputed underpayment of $20 ($50 multiplied by 40 percent). Under the partnership agreement in effect for Partnership's 2019 taxable year, the adjustments attributable to both of these assets are allocated to the partners consistent with their ownership percentages in Partnership. Partnership requests a modification under paragraph (d)(6) of this section to calculate two imputed underpayments with respect to the partnership adjustments for 2019: A general imputed underpayment with respect to $50 of the increase in income related to the adjustment of the value of asset X and a specific imputed underpayment with respect to $25 of the increase in income related to the adjustment of the value of asset X and the $25 decrease in income related to the adjustment of the value of asset Y. If approved by the IRS, the general imputed underpayment, as modified, is $20 ($50 multiplied by 40 percent) and the specific imputed underpayment would result in zero (increase in income of $25 attributable to asset X offset by the decrease in income of $25 attributable to asset Y), causing those two adjustments to be disregarded and taken into account by the partnership in the adjustment year as adjustments that do not result in an imputed underpayment. The IRS may determine that the creation of the specific imputed underpayment is not appropriate in this circumstance and deny the partnership's modification request because the adjustments are not related to allocations to particular partners and also because the proposed modification results in an increase in net non-positive adjustments. See § 301.6225–1(e)(2)(iii).

(f) *Applicability date*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22T in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22T is in effect.

■ **Par. 9.** Section 301.6225–3 is added to read as follows:

§ 301.6225–3 Treatment of partnership adjustments that do not result in an imputed underpayment.

(a) *In general.* Partnership adjustments (as defined in § 301.6241–1(a)(6)) that do not result in an imputed underpayment (as described in § 301.6225–1(c)(2)) are taken into account by a partnership in the adjustment year (as defined in § 301.6241–1(a)(1)) in accordance with paragraph (b) of this section.

(b) *Treatment of adjustments by the partnership*—(1) *In general.* Except as described in paragraphs (b)(2) through (b)(5) of this section, a partnership adjustment that does not result in an imputed underpayment is taken into account as a reduction in non-separately stated income or as an increase in non-separately stated loss for the adjustment year depending on whether the adjustment is to an item of income or loss.

(2) *Separately stated items.* In the case of a partnership adjustment to an item that is required to be separately stated under section 702, the adjustment is taken into account by the partnership in the adjustment year as a reduction in such separately stated item or as an increase in such separately stated item depending on whether the adjustment is a reduction or an increase to the separately stated item.

(3) *Credits.* In the case of a partnership adjustment to a credit shown on the partnership return for the reviewed year (as defined in § 301.6241–1(a)(8)), the adjustment is taken into account by the partnership in the adjustment year as a separately stated item.

(4) *Reallocation adjustments.* A partnership adjustment that does not result in an imputed underpayment pursuant to § 301.6225–1(c)(2)(i) is taken into account by the partnership in the adjustment year as a separately stated item or a non-separately stated item, as required by section 702. The portion of an adjustment allocated under this paragraph (b)(4) is allocated to adjustment year partners (as defined in § 301.6241–1(a)(2)) who are also reviewed year partners (as defined in § 301.6241–1(a)(9)) with respect to whom the amount was reallocated. If any reviewed year partner with respect to whom an amount was reallocated is not also an adjustment year partner, the portion of the adjustment that would otherwise be allocated to such reviewed year partner is allocated instead to the adjustment year partner or partners who are the successor or successors to the reviewed year partner. If the partnership cannot identify an adjustment year partner that is a successor to the reviewed year partner described in the previous sentence or if a successor does not exist, the portion of the adjustment that would otherwise be allocated to that reviewed year partner is allocated among the adjustment year partners according to the adjustment year partners' distributive shares.

(5) *Adjustments taken into account by partners as part of the modification process.* If, as part of modification under § 301.6225–2, a reviewed year partner (or an indirect partner (as defined in § 301.6241–1(a)(4)) that holds its interest in the partnership through its interest in the reviewed year partner)

takes into account an adjustment that would otherwise not result in an imputed underpayment, and the IRS approves the modification, such adjustment is not taken into account by the partnership in the adjustment year.

(6) *Effect of election under section 6226.* If a partnership makes a valid election under § 301.6226–1 with respect to an imputed underpayment, a partnership adjustment that does not result in an imputed underpayment and that is described in § 301.6225–1(c)(2)(i) or (c)(2)(ii) is taken into account by the reviewed year partners in accordance with § 301.6226–3 and is not taken into account under this section.

(c) *Treatment of adjustment year partners.* The rules under subchapter K of chapter 1 of subtitle A of the Internal Revenue Code with respect to the treatment of partners apply in the case of adjustments taken into account by the partnership under this section.

(d) *Applicability date*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22T in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22T is in effect.

■ **Par. 10.** Section 301.6225–4 is added to read as follows:

§ 301.6225–4 Adjustments to partners' outside bases and capital accounts and a partnership's basis and book value in property—[Reserved]

■ **Par. 11.** Section 301.6226–1 is added to read as follows:

§ 301.6226–1 Election for an alternative to the payment of the imputed underpayment.

(a) *In general.* A partnership may elect under this section an alternative to the payment by the partnership of an imputed underpayment determined under section 6225 and the regulations thereunder. In addition, a partnership making a valid election under paragraph (b) of section is no longer liable for the imputed underpayment (as defined in § 301.6241(a)(3)) to which the election applies. If a notice of final partnership adjustment (FPA) mailed under section 6231 includes more than one imputed underpayment in accordance with § 301.6225–1(e), a partnership may make an election under this section with respect to one or more imputed underpayments identified in the FPA. See § 301.6226–2(f) regarding the determination of each reviewed year partner's share of the partnership adjustments (as defined in § 301.6241–1(a)(6)) and related penalties, additions to tax, and additional amounts that must be taken into account.

(b) *Effect of election*—(1) *Reviewed year partners.* If a partnership makes a valid election under this section with respect to any imputed underpayment, the reviewed year partners (as defined in § 301.6241–1(a)(9)) must take into account their share of the partnership adjustments that relate to that imputed underpayment and are liable for any tax, penalties, additions to tax, additional amounts, and interest as described in § 301.6226–3. A modification approved by the IRS under § 301.6225–2 is taken into account by the reviewed year partners in accordance with § 301.6226–2(f)(2).

(2) *Partnership.* A partnership making a valid election under this section is not liable for the imputed underpayment to which the election applies on the date such election is made. In addition, adjustments that do not result in an imputed underpayment described in § 301.6225–1(c)(2)(i) and (ii) are not taken into account by the partnership in the adjustment year (as defined in § 301.6241–1(a)(1)) and instead are included in the reviewed year partners' share of the partnership adjustments reported to the reviewed year partners of the partnership.

(c) *Time, form, and manner for making the election*—(1) *In general.* An election under this section is valid only if all of the provisions of this section and § 301.6226–2 (regarding statements furnished to reviewed year partners and filed with the Internal Revenue Service (IRS)) are satisfied. An election under this section may only be revoked with the consent of the IRS.

(2) *Invalid election.* If an election under this section is determined by the IRS to be invalid, the IRS will notify the partnership and the partnership representative within 30 days of the determination that the election is invalid and the reason for the determination that the election is invalid. If the IRS makes a final determination that an election under this section is invalid, section 6225 applies with respect to the imputed underpayment as if the election was never made and the partnership must pay the imputed underpayment under section 6225 and any penalties and interest under section 6233. An election under this section is valid until the IRS determines that the election is invalid.

(3) *Time for making the election.* An election under this section must be filed within 45 days of the date the FPA is mailed by the IRS. The time for filing such an election may not be extended.

(4) *Form and manner of the election*—(i) *In general.* An election under this section must be signed by the partnership representative and filed in accordance with forms, instructions, and other guidance and include the information specified in paragraph (c)(4)(ii) of this section.

(ii) *Contents of the election.* An election under this section must include—

(A) The name, address, and correct taxpayer identification number (TIN) of the partnership,

(B) The taxable year to which the election relates,

(C) A copy of the FPA to which the election relates,

(D) In the case of an FPA that includes more than one imputed underpayment, identification of the imputed underpayment(s) to which the election applies,

(E) Each reviewed year partner's name, address, and correct TIN, and

(F) Any other information prescribed by the IRS in forms, instructions, and other guidance.

(d) *Binding nature of statements.* The election under this section, which includes filing and furnishing statements described in § 301.6226–2, are actions of the partnership under section 6223 and the regulations thereunder and, unless determined otherwise by the IRS, the partner's share of the adjustments, the safe harbor amount and interest safe harbor amount (as described in § 301.6226–2(g)), and any penalties, additions to tax, and additional amounts as set forth in the statement are binding on the partner pursuant to section 6223. Accordingly, a partner may not treat items reflected on a statement described in § 301.6226–2 on the partner's return inconsistently with how those items are treated on the statement that is filed with the IRS. See § 301.6222–1(c)(2) (regarding items the treatment of which a partner is bound to under section 6223).

(e) *Coordination with section 6234 regarding judicial review.* Nothing in this section affects the rules regarding judicial review of a partnership adjustment. Accordingly, a partnership that makes an election under this section is not precluded from filing a petition under section 6234(a). See § 301.6226–2(b)(3), *Example 3.*

(f) *Applicability date*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22T in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1,

2018 for which a valid election under § 301.9100–22T is in effect.

■ **Par. 12.** Section 301.6226–2 is added to read as follows:

§ 301.6226–2 Statements furnished to partners and filed with the IRS.

(a) *In general.* A partnership that makes an election under § 301.6226–1 must furnish to each reviewed year partner (as defined in § 301.6241–1(a)(9)) and file with the Internal Revenue Service (IRS) a statement that includes the items required by paragraphs (e) and (f) of this section with respect to each reviewed year partner's share of partnership adjustments (as defined in § 301.6241–1(a)(6)) with respect to the imputed underpayment for which an election under § 301.6226–1 is made. The statements furnished to the reviewed year partners under this section are in addition to, and must be filed and furnished separate from, any other statements required to be filed with the IRS and furnished to partners, including any statements under section 6031(b). A separate statement under this section must be furnished with respect to each reviewed year (as defined in § 301.6241–1(a)(8)) subject to an election under § 301.6226–1.

(b) *Time and manner for furnishing the statements to partners*—(1) *In general.* The statements described in paragraph (a) of this section must be furnished to the reviewed year partners no later than 60 days after the date all of the partnership adjustments to which the statement relates are finally determined. The partnership adjustments are finally determined upon the later of:

(i) The expiration of the time to file a petition under section 6234, or

(ii) If a petition under section 6234 is filed, the date when the court's decision becomes final.

(2) *Address used for reviewed year partners.* The partnership must furnish the statement described in paragraph (a) of this section to each reviewed year partner in accordance with the forms, instructions, and other guidance prescribed by the IRS. If the partnership mails the statement, it must mail the statement to the current or last address of the reviewed year partner that is known to the partnership. If a statement is returned to the partnership as undeliverable, the partnership must undertake reasonable diligence to identify a correct address for the reviewed year partner to which the statement relates.

(3) *Examples.* The following examples illustrate the rules of paragraph (b) of this section.

Example 1. During Partnership's 2020 taxable year, A, an individual, was a partner in Partnership and had an address at 123 Main St. On February 1, 2021, A sold his interest in Partnership and informed Partnership that A moved to 456 Broad St. On March 15, 2021, Partnership mails A's statement under section 6031(b) for the 2020 taxable year to 456 Broad St. On June 1, 2023, A moves again but does not inform Partnership of A's new address. In 2023, the IRS initiates an administrative proceeding with respect to Partnership's 2020 taxable year and mails a notice of final partnership adjustment (FPA) to Partnership for that year. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 and on May 31, 2024, timely mails a statement described in paragraph (a) of this section to A at 456 Broad St. Although the statement was mailed to the last address for A that was known to Partnership, it is returned to Partnership as undeliverable because unknown to Partnership, A had moved. After undertaking reasonable diligence as to the correct address of A, Partnership is unable to ascertain the correct address. Therefore, pursuant to paragraph (b)(2) of this section, Partnership has properly furnished the statement to A.

Example 2. The facts are the same as in *Example 1* of this paragraph (b)(3), except that A lives at 789 Forest Ave during all of 2024 and reasonable diligence would have revealed that 789 Forest Ave is the correct address for A, but Partnership did not undertake such diligence. Therefore, Partnership failed to properly furnish the statement with respect to A pursuant to paragraph (b)(2) of this section.

Example 3. Partnership is a calendar year taxpayer. The IRS initiates an administrative proceeding with respect to Partnership's 2020 taxable year. On January 1, 2024, the IRS mails an FPA with respect to the 2020 taxable year to Partnership. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1. Partnership timely files a petition for readjustment under section 6234 with the Tax Court. The IRS prevails, and the Tax Court sustains all of the adjustments in the FPA with respect to the 2020 taxable year. The time to appeal the Tax Court decision expires, and the Tax Court decision becomes final on April 10, 2025. Under paragraph (b)(1)(ii) of this section, the adjustments in the FPA are finally determined on April 10, 2025, and Partnership must furnish the statements described in paragraph (a) of this section to its reviewed year partners and electronically file the statements with the IRS no later than June 9, 2025. See paragraph (c) of this section for the rules regarding filing the statements with the IRS.

(c) *Time and manner for filing the statements with the IRS.* No later than 60 days after the date the partnership adjustments are finally determined (as described in paragraph (b)(1) of this section), the partnership must electronically file with the IRS the statements that the partnership furnishes to each reviewed year partner under this section, along with a transmittal that includes a summary of the statements filed and such other information required in forms, instructions, and other guidance.

(d) *Correction of statements*—(1) *In general.* A partnership corrects an error in a statement furnished under paragraph (b) of this section or filed under paragraph (c) of this section by filing the corrected statement with the IRS in the manner prescribed in paragraph (c) of this section and furnishing a copy of the corrected statement to the reviewed year partner to whom the statement relates in accordance with the forms, instructions, and other guidance prescribed by the IRS.

(2) *Error discovered by partnership*—(i) *Discovery within 60 days of statement due date.* If a partnership discovers an error in a statement within 60 days of the due date for furnishing the statements to partners and filing the statements with the IRS as described in paragraphs (b) and (c) of this section, the partnership must correct the error in accordance with paragraph (d)(1) of this section and does not have to seek consent of the IRS prior to doing so.

(ii) *Error discovered more than 60 days after statement due date.* If a partnership discovers an error more than 60 days after the due date for furnishing the statements to partners and filing the statements with the IRS as described in paragraphs (b) and (c) of this section, the partnership may only correct the error after receiving consent of the IRS in accordance with the forms, instructions, and other guidance prescribed by the IRS.

(3) *Error discovered by the IRS.* If the IRS discovers an error in the statements furnished or filed under paragraphs (b) and (c) of this section, the IRS may require the partnership to correct such errors in accordance with paragraph (d)(1) of this section. Failure by the partnership to correct an error when required by the IRS may be treated by the IRS as a failure to properly furnish statements to partners and file the statements with the IRS as described in paragraphs (b) and (c) of this section.

(4) *Adjustments in the corrected statements taken into account by the reviewed year partners.* The adjustments included on a corrected statement are taken into account by a reviewed year partner in accordance with § 301.6226–3 for the reporting year (as defined in § 301.6226–3(a)).

(e) *Content of the statements.* Each statement described in paragraph (a) of this section must include the following information:

(1) The name and correct TIN of the reviewed year partner to whom the statement is being furnished;

(2) the current or last address of the reviewed year partner that is known to the partnership;

(3) the reviewed year partner's share of items as originally reported for the reviewed year to the partner on statements furnished to the partner under section 6031(b) and, if applicable, section 6227;

(4) the reviewed year partner's share of partnership adjustments determined under paragraph (f)(1) of this section;

(5) modifications with respect to the reviewed year partner determined under paragraph (f)(2) of this section;

(6) the reviewed year partner's share of any amounts attributable to adjustments to the partnership's tax attributes (as defined in § 301.6241–1(a)(10)) for any intervening year (as defined in § 301.6226–3(b)(3)) resulting from the partnership adjustments in the reviewed year;

(7) the reviewed year partner's share of any penalties, additions to tax, or additional amounts determined under paragraph (f)(3) of this section;

(8) the reviewed year partner's safe harbor amount and, if applicable, interest safe harbor amount, as described under paragraph (g) of this section;

(9) the date the statement is furnished to the reviewed year partner;

(10) the partnership taxable year to which the adjustments relate; and

(11) any other information required by forms, instructions, and other guidance prescribed by the IRS.

(f) *Determination of each partner's share of adjustments, penalties, additions to tax, and additional amounts*—(1) *Adjustments and other amounts*—(i) *In general.* Except as described in paragraph (f)(1)(ii), (f)(1)(iii), or (f)(2) of this section, the adjustments set forth in the statement described in paragraph (a) of this section and any amounts attributable to adjustments to the partnership's tax attributes are reported to the reviewed year partner in the same manner as each adjusted item was originally allocated to the reviewed year partner on the partnership return for the reviewed year or intervening year, as applicable.

(ii) *Adjusted item not reported on the partnership's return for the reviewed year.* Except as described in paragraph (f)(1)(iii) of this section, if the adjusted item was not reported on the partnership return for the reviewed year or intervening year, as applicable, each reviewed year partner's share of the adjustments must be determined in accordance with how such items would have been allocated under rules that apply with respect to partnership allocations, including under the partnership agreement.

(iii) *Adjustments that specifically allocate items.* If an adjustment involves an allocation of an item to a specific partner or in a specific manner, including a reallocation of an item, the reviewed year partner's share of the adjustment set forth in the statement is determined in accordance with the adjustment as finally determined (as described in paragraph (b)(1) of this section).

(2) *Treatment of modifications disregarded.* If the reviewed year partner filed an amended return pursuant to § 301.6225–3(c)(2) or entered into a closing agreement pursuant to § 301.6225–3(c)(6) and the imputed underpayment under section 6225 was determined without regard to the adjusted items taken into account on the amended return or in the closing agreement, such adjustments are disregarded for purposes of determining each reviewed year partner's share of the adjustments under paragraph (f)(1) of this section. However, these modifications are listed separately on the statements described in paragraph (a) of this section.

(3) *Penalties, additions to tax, or additional amounts.* Penalties, additions to tax, and additional amounts must be reported to each reviewed year partner in the same proportion as the reviewed year partner's share of the adjustment to which the penalty, addition to tax, or additional amount relates as determined in paragraph (f)(1) of this section. If a penalty, addition to tax, or additional amount does not relate to a specific adjustment, each reviewed year partner's share of the penalty, addition to tax, or additional amount is determined in accordance with how such items would have been allocated under rules that apply with respect to partnership allocations, including under the partnership agreement, unless it is allocated to a specific partner in a specific manner in a final determination of the adjustments, in which case it is allocated in accordance with that final determination. See paragraph (b)(1) of this section regarding when adjustments are finally determined.

(g) *Safe harbor amount*—(1) *In general.* The partnership must calculate a safe harbor amount, which cannot be less than zero, for each reviewed year partner in accordance with paragraph (g)(2) of this section and an interest safe harbor amount for each reviewed year partner that is an individual in accordance with paragraph (g)(2). Except as provided in paragraph (g)(2)(ii) of this section, the rules of paragraph (f) of this section apply for purposes of paragraph (g) of this section.

(2) *Calculating the safe harbor amount*—(i) *In general.* The safe harbor amount for each reviewed year partner is calculated in the same manner as the imputed underpayment under § 301.6225–1 except that each reviewed year partner's share of the partnership adjustments on the statement described in paragraph (a) of this section (including any amounts attributable to adjustments to partnership tax attributes) are substituted as the partnership adjustments taken into account for purposes of determining the imputed underpayment under § 301.6225–1.

(ii) *Effect of modification on safe harbor amount*—(A) *In general.* Except as described in paragraph (g)(2)(ii)(B) of this section, any modification of the imputed underpayment approved by the IRS, including modification under § 301.6225–2(d)(4) (regarding rate modification), has no effect on the determination of the safe harbor amount for any partner.

(B) *Amended return and closing agreement.* Notwithstanding paragraph (g)(2)(ii)(A) of this section, if the reviewed year partner filed an amended return pursuant to § 301.6225–3(d)(2), or entered into a closing agreement pursuant to § 301–6225–3(d)(6), and the imputed underpayment under section 6225 to which an election under § 301.6226–1 applies is determined without regard to the adjustments taken into account on the amended return or in the closing agreement, such adjustments are disregarded in determining that partner's safe harbor amount.

(iii) *Calculating the interest safe harbor amount.* For partners who are individuals and who have calendar year taxable years, the partnership must also calculate an interest safe harbor amount. The interest safe harbor amount is calculated at the rate set forth in § 301.6226–3(d)(4) from the due date (without extension) of the individual reviewed year partner's return for the first affected year (as defined in paragraph § 301.6226–3(b)(2)) until the due date (without extension) of the individual reviewed year partner's return for the reporting year.

(h) *Coordination with other provisions under subtitle A of the Internal Revenue Code*—(1) *Statements furnished to qualified investment entities described in section 860.* If a reviewed year partner is a qualified investment entity within the meaning of section 860(b) and the partner receives a statement described in paragraph (a) of this

section, the partner may be able to avail itself of the deficiency dividend procedure described in § 301.6226–3(b)(4).

(2) *Liability for tax under section 7704(g)(3).* An election under this section has no effect on a partnership's liability for any tax under section 7704(g)(3) (regarding the exception for electing 1987 partnerships from the general rule that certain publicly traded partnerships are treated as corporations).

(3) *Adjustments subject to chapters 3 and 4 of subtitle A of the Internal Revenue Code.*—[Reserved]

(i) *Applicability date*—(1) *In general.* Except as provided in paragraph (i)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22T in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22T is in effect.

■ **Par. 13.** Section 301.6226–3 is added to read as follows:

§ 301.6226–3 Adjustments Taken Into Account by Partners.

(a) *Tax imposed by chapter 1 increased by additional reporting year tax.* The tax imposed by chapter 1 of subtitle A of the Internal Revenue Code (chapter 1 tax) for each reviewed year partner (as defined in § 301.6241–1(a)(9)) for the taxable year that includes the date a statement was furnished in accordance with § 301.6226–2 (the *reporting year*) is increased by the *additional reporting year tax.* The *additional reporting year tax* is either the aggregate of the adjustment amounts (determined in accordance with paragraph (b) of this section) or, if an election is made under paragraph (c) of this section, the safe harbor amount (determined in accordance with § 301.6226–2(g)). In addition to being liable for the additional reporting year tax, a reviewed year partner must also pay for the reporting year the partner's share of any penalties, additions to tax, and additional amounts as reflected in the statement described in § 301.6226–2 and any interest (as determined under paragraph (d) of this section).

(b) *Determining the aggregate of the adjustment amounts*—(1) *In general.* For purposes of paragraph (a) of this section, the aggregate of the adjustment amounts is the aggregate of the correction amounts described in paragraphs (b)(2) and (b)(3) of this section. A correction amount cannot be less than zero, and any amount below zero after applying the rules in this paragraph (b) does not reduce any other correction amount or tax due.

(2) *Correction amount for the first affected year.* The correction amount for the taxable year of the partner that includes the end of the reviewed year (the first affected year) is the amount by which the reviewed year partner's chapter 1 tax would increase for the first affected year if the partner's taxable income for such year was recomputed by taking into account the reviewed year partner's share of the partnership adjustments (as defined in § 301.6241–1(a)(6)) reflected on the statement described in § 301.6226–2 with respect to the partner. The correction amount is the amount by which the chapter 1 tax that would have been imposed for the first affected year if the items as adjusted in the statement described in § 301.6226–2 had been reported as such on the return for the first affected year exceeds the excess of—

(i) The sum of—

(A) The amount of chapter 1 tax shown by the partner on the return for the first affected year (which includes amounts shown on an amended return for such year, including an amended return filed under section 6225(c)(2) by the reviewed year partner or an indirect partner (as defined in § 301.6241–1(a)(4)) that holds its interest in the partnership through its interest in the reviewed year partner with respect to the first affected year of the indirect partner), plus

(B) Amounts not so shown previously assessed (or collected without assessment) (as defined in § 1.6664–2(d) of this chapter), less

(ii) The amount of rebates made (as defined in § 1.6664–2(e) of this chapter).

The definition of correction amount also may be expressed as—

$$\text{Correction amount} = A - (B + C - D),$$

Where A = the amount of chapter 1 tax that would have been imposed had the items as adjusted been properly reported on the return for the first affected year; B = the amount shown as chapter 1 tax on the return for the first affected year (taking into account amended returns); C = amounts not so shown previously assessed (or collected without assessment); and D = the amount of rebates made.

(3) *Correction amount for the intervening years.* The correction amount for all taxable years after the first affected year and before the reporting year (the intervening years) is the aggregate of the correction amounts determined for each intervening year. Determining the correction amount for each intervening year is a year-by-year determination. The correction amount for each intervening year is the amount by which the reviewed year partner's chapter 1 tax for such year would increase if the partner's taxable income for such year was recomputed by taking into account any adjustments to tax attributes (as defined in § 301.6241–1(a)(10)) under this paragraph (b)(3). Accordingly, the correction amount for each intervening year is the amount by which the chapter 1 tax that would have been imposed for the intervening year if any tax attribute for the intervening year had been adjusted after taking into account the reviewed year partner's share of the adjustments for the first affected year as described in paragraph (b)(2) of this section and if any tax attribute for the intervening year had been adjusted after taking into account any adjustments to tax attributes in any prior intervening year(s) exceeds the excess of—

(i) The sum of—

(A) The amount of chapter 1 tax shown by the partner on the return for the intervening year (which includes amounts shown on an amended return for such year, including an amended return filed under section 6225(c)(2) by a reviewed year partner or an indirect partner that holds its interest in the partnership through its interest in the reviewed year partner), plus

(B) Amounts not so shown previously assessed (or collected without assessment) (as defined in § 1.6664–2(d) of this chapter), over

(ii) The amount of rebates made (as defined in § 1.6664–2(e) of this chapter).

The definition of correction amount also may be expressed as—

$$\text{Correction amount} = A - (B + C - D),$$

Where A = the amount of chapter 1 tax that would have been imposed for the intervening year; B = the amount shown as chapter 1 tax on the return for the intervening year (taking into account amended returns); C = amounts not so shown previously assessed (or collected without assessment); and D = the amount of rebates made.

(4) *Coordination of sections 860 and 6226.* If a qualified investment entity (QIE) within the meaning of section 860(b) receives a statement described in § 301.6226–2(a) and correctly makes a determination within the meaning of section 860(e)(4) that one or more of the adjustments reflected in the statement is an adjustment within the meaning of section 860(d) with respect to that QIE for a taxable year, the QIE may distribute deficiency dividends within the meaning of section 860(f) for that taxable year and avail itself of the deficiency dividend procedures set forth in section 860. If the QIE utilizes the deficiency dividend procedures with respect to adjustments in a statement

described in § 301.6226–2(a), the QIE may claim a deduction for deficiency dividends against the adjustments furnished to the QIE in the statement in calculating any correction amounts under paragraphs (b)(2) and (b)(3) of this section, and interest on that correction amount under paragraph (d) of this section, to the extent that the QIE makes deficiency dividend distributions under section 860(f) and complies with all requirements of section 860 and the regulations thereunder. A deficiency dividends deduction under this paragraph (b)(4) and section 860(a) has no effect on a QIE's liability for any penalties reflected in a statement described in § 301.6226–2(a).

(c) *Election to pay safe harbor amount.* A reviewed year partner receiving a statement described in § 301.6226–2 may elect under this paragraph (c) to pay the safe harbor amount shown on the statement in lieu of the additional reporting year tax determined under paragraph (b) of this section. The election under this paragraph (c) is made on the reviewed year partner's return for the reporting year (as defined in paragraph (a) of this section) in accordance with forms and instructions. If a reviewed year partner making an election under this paragraph (c) fails to report the safe harbor amount on the partner's timely-filed return (determined without regard to extension) for the reporting year, the additional reporting year tax for the reviewed year partner is determined under paragraph (b) of this section.

(d) *Interest*—(1) *Interest on the correction amounts.* Interest on the correction amounts determined under paragraph (b) of this section is the aggregate of all interest calculated for each applicable taxable year at the rate set forth in paragraph (d)(4) of this section. For each applicable taxable year, interest on the correction amount is calculated from the due date (without extension) of the reviewed year partner's return for such applicable taxable year until the amount is paid. For purposes of this paragraph (d)(1), the term *applicable taxable year* means the reviewed year partner's taxable year affected by taking into account adjustments as described in paragraph (b) of this section (for instance, the first affected year and any intervening year in which there is a correction amount).

(2) *Interest on the safe harbor amount*—(i) *In general.* Except as described in paragraph (d)(2)(ii) of this section, in the case of an election under paragraph (c) of this section, interest on the safe harbor amount is calculated at the rate set forth in paragraph (d)(4) of this section from the due date (without extension) of the reviewed year partner's return for the first affected year (as defined in paragraph (b)(2) of this section) until the amount is paid.

(ii) *Election to pay interest safe harbor amount.* In the case of an election under paragraph (c) of this section, a reviewed year partner who is an individual and who has a calendar year taxable year may elect to pay the interest safe harbor amount in lieu of calculating the interest on the safe harbor amount as described in paragraph (d)(2)(i) of this section. The election under this paragraph (d)(2)(ii) is made on the reviewed year partner's return for the reporting year (as defined in paragraph (a) of this section) in accordance with forms and instructions. If a reviewed year partner making an election under this paragraph (d)(2)(ii) fails to pay the interest safe harbor amount in full on or before the due date (without extension) for the return on which the election is made, interest on the safe harbor amount is determined under paragraph (d)(2)(i) of this section.

(3) *Interest on penalties.* Interest on any penalties, additions to tax, or additional amounts allocated to a reviewed year partner in a statement described in § 301.6226–2 is calculated at the rate set forth in paragraph (d)(4) of this section from the due date (without extension) of the reviewed year partner's return for the first affected year (as defined in paragraph (b)(2) of this section) until the amount is paid.

(4) *Rate of interest.* For purposes of paragraph (d) of this section, interest is calculated using the underpayment rate under section 6621(a)(2) by substituting ''5 percentage points'' for ''3 percentage points'' in section 6621(a)(2)(B).

(e) *Pass-through partners.*—[Reserved]

(f) *Partners that are foreign entities.*—[Reserved]

(g) *Examples.* The following examples illustrate the rules of this section. For purposes of these examples, each partnership and partner has a calendar year taxable year (unless otherwise stated), no modifications are requested by any partnership under § 301.6225–2 (unless otherwise stated), and the highest rate of income tax in effect for all taxpayers is 40 percent for all relevant periods.

Example 1. On its partnership return for the 2020 tax year, Partnership reported ordinary income of $1,000 and charitable contributions of $400. On June 1, 2023, the IRS mails a notice of final partnership adjustment (FPA) to Partnership for Partnership's 2020 year disallowing the charitable contribution in its entirety and asserting an imputed underpayment plus a penalty of $32 (a 20 percent accuracy-related penalty under section 6662(b)). Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and files a timely petition in the Tax Court challenging the partnership adjustments. The Tax Court determines that Partnership is not entitled to any of the claimed $400 in charitable contributions and upholds the penalty of $32. The decision regarding Partnership's 2020 tax year becomes final on December 15, 2025. Pursuant to § 301.6225–2(b)(1), the partnership adjustments are finally determined on December 15, 2025. On February 1, 2026, Partnership files the statements described under § 301.6226–2 with the IRS and furnishes to partner A, an individual who was a partner in Partnership during 2020, a statement described in § 301.6226–2. A had a 25 percent interest in Partnership during all of 2020 and was allocated 25 percent of all items from Partnership for that year. The statement shows A's share of ordinary income reported on Partnership's return for the reviewed year of $250 and A's share of the charitable contribution reported on Partnership's return for the reviewed year of $100. The statement also shows no adjustment to A's share of ordinary income, but does show an adjustment to A's share of the charitable contribution, a reduction of $100 resulting in $0 charitable contribution allocated to A from Partnership for 2020. In addition, the statement reports $8 as A's share of the penalty (25 percent of $32) related to the imputed underpayment resulting from the denial of the charitable contribution. The statement also shows A's safe harbor amount and interest safe harbor amount, as determined under § 301.6226–2(g). A does not elect to pay the safe harbor amount and therefore must pay the additional reporting year tax as determined in accordance with paragraph (b) of this section, in addition to A's share of the penalty and interest. A computes his additional reporting year tax as follows. First, A determines the correction amount for the first affected year (the 2020 taxable year) by taking into account A's share of the partnership adjustment (<100> reduction in charitable contribution) for the 2020 taxable year. A determines the amount by which his chapter 1 tax for 2020 would have increased if the $100 adjustment to the charitable contribution from Partnership were taken into account for that year. There is no adjustment to tax attributes in A's intervening years as a result of the adjustment to the charitable contribution for 2020. Therefore, A's aggregate of the adjustment amounts is the correction amount for 2020, A's first affected year. In addition to the aggregate of the adjustment amount being added to the chapter 1 tax that A owes for 2026, the reporting year, A's tax liability for 2026 includes the $8 penalty and any interest on the correction amount for the first affected year and the penalty determined in accordance with paragraph (d) of this section. Interest on the correction amount for the first affected tax year runs from April 15, 2021, the due date of A's 2020 return (the first affected tax year) until A pays this amount. In addition, interest runs on the $8 penalty from April 15, 2021, the due date of A's 2020

return for the first affected year until A pays this amount. On his 2026 income tax return, A must report the additional reporting year tax determined in accordance with section (b) of this section, which is the correction amount for 2020, plus A's share of the accuracy-related penalty determined at the partnership level ($8), and interest determined in accordance with paragraph (d) of this section on the correction amount for 2020 and the penalty.

Example 2. The facts are the same as in *Example 1* of this paragraph (g), except that A makes the elections under paragraphs (c) and (d)(ii) of this section to pay the safe harbor amount and interest safe harbor amount. In addition to the safe harbor amount and the interest safe harbor amount, A must also pay the $8 penalty allocated to A on the statement. Therefore, on his 2026 income tax return, A must report the additional reporting year tax (in this case, the safe harbor amount), the penalty of $8, and the interest safe harbor amount.

Example 3. On its partnership return for the 2020 tax year, Partnership reported an ordinary loss of $500 million. On June 1, 2023, the IRS mails an FPA to Partnership for the 2020 taxable year determining that $300 million of the $500 million in ordinary loss should be recharacterized as a long-term capital loss. Partnership has no long-term capital gain for its 2020 tax year. The FPA for Partnership's 2020 tax year reflects an adjustment of an increase in ordinary income of $300 million (as a result of the disallowance of the recharacterization of $300 million from ordinary loss to long-term capital loss) and an imputed underpayment related to that adjustment, as well as an adjustment of an additional $300 million in long-term capital loss for 2020 which does not result in an imputed underpayment pursuant to under § 301.6225–1(c)(2)(ii). Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA and does not file a petition for readjustment under section 6234. Accordingly, under § 301.6226–1(b)(2) and § 301.6225–3(b)(6), the adjustment year partners (as defined in § 301.6241–1(a)(2)) do not take into account the $300 million long-term capital loss that does not result in an imputed underpayment. Rather, the reviewed year partners will take into account the $300 million long-term capital loss. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6225–2(b), the partnership adjustments become finally determined on August 30, 2023. On September 30, 2023, Partnership files with the IRS statements described in § 301.6226–2 and furnishes statements to all of its reviewed year partners in accordance with § 301.6226–2. One partner of Partnership in 2020, B (an individual), had a 25 percent interest in Partnership during all of 2020 and was allocated 25 percent of all items from Partnership for that year. The statement filed with the IRS and furnished to B shows B's allocable share of the ordinary loss reported on Partnership's return for the 2020 taxable year as $125 million. The statement also shows an adjustment to B's allocable share of the ordinary loss in the amount of <$75 million>, resulting in a corrected ordinary loss allocated to B of $50 million for taxable year 2020 ($125 million originally allocated to B less $75 million which is B's share of the adjustment to the ordinary loss). In addition, the statement shows an increase to B's share of long-term capital loss in the amount of $75 million (B's share of the adjustment that did not result in the imputed underpayment with respect to Partnership). The statement also shows B's safe harbor amount and interest safe harbor amount, as determined under § 301.6226–2(g). B does not elect to pay the safe harbor amount and therefore must pay the additional reporting year tax as determined in accordance with paragraph (b) of this section. B computes his additional reporting year tax as follows. First, B determines the correction amount for the first affected year (the 2020 taxable year) by taking into account B's share of the partnership adjustments (a $75 million reduction in ordinary loss and an increase of $75 million in capital loss) for the 2020 taxable year. B determines the amount by which his chapter 1 tax for 2020 would have increased if the $75 adjustment to ordinary loss and the $75 million adjustment to capital loss from Partnership were taken into account for that year. Second, B determines if there is any increase in chapter 1 tax for any intervening year as a result of the adjustment to the ordinary and capital losses for 2020. B's aggregate of the adjustment amounts is the correction amount for 2020, B's first affected year plus any correction amounts for any intervening years. B is also liable for any interest on the correction amount for the first affected year and for any intervening year as determined in accordance with paragraph (d) of this section.

Example 4. On its partnership return for the 2020 tax year, Partnership reported ordinary income of $100 million and a capital gain of $40 million. Partnership had four equal partners during the 2020 tax year: E, F, G, and H, all of whom were individuals. On its partnership return for the 2020 tax year, the entire capital gain was allocated to partner E and the ordinary income was allocated to all partners based on their equal (25 percent) interest in Partnership. The IRS initiates an administrative proceeding with respect to Partnership's 2020 taxable year and determines that the capital gain should have been allocated equally to all four partners and that Partnership should have recognized an additional $10 million in ordinary income. No modifications were approved by the IRS and no penalties are imposed. On June 1, 2023, the IRS mails an FPA to Partnership reflecting the reallocation of the $40 million capital gain so that F, G, and H each have $10 million increase in capital gain and E has a $30 million reduction in capital gain for 2020. In addition, the FPA reflects the partnership adjustment increasing ordinary income by $10 million. The FPA reflects a general imputed underpayment with respect to the increase in ordinary income and a specific imputed underpayment with respect to the increase in capital gain allocated to F, G, and H. In addition, the FPA reflects a $30 million partnership adjustment that does not result in an imputed underpayment, that is, the reduction of $30 million in capital gain with respect to E. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the specific imputed underpayment relating to the reallocation of capital gain. Partnership does not file a petition for readjustment under section 6234. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6225–2(b), the partnership adjustments become finally determined on August 30, 2023. Partnership timely pays and reports the general imputed underpayment relating to the partnership adjustment to ordinary income. On September 30, 2023, Partnership files with the IRS statements described in § 301.6226–2 and furnishes statements to its partners reflecting their share of the partnership adjustments as finally determined in the FPA that relate to the specific imputed underpayment, that is, the reallocation of capital gain. The statements for F, G, and H each reflect a partnership adjustment of an additional $10 million of capital gain for 2020. The statements also show that each partner's safe harbor amount and interest safe harbor amount, determined under § 301.6226–2(g). F, G, and H elect to pay the safe harbor amount and interest safe harbor amount. The statement for E reflects a partnership adjustment of a reduction of $10 million of capital gain for 2020. The statement also reflects that E's safe harbor amount, as determined under § 301.6226–2(g), is $0 (<$10 million> multiplied by 40 percent but not less than zero). F elects to pay the safe harbor amount, which is zero.

Example 5. On its partnership return for the 2020 taxable year, Partnership reported a capital loss of $5 million. During an administrative proceeding with respect to Partnership's 2020 taxable year, the IRS mails a notice of proposed partnership adjustment (NOPPA) in which it proposes to disallow $2 million of the reported $5 million capital loss. No penalties are imposed with respect to the $2 million adjustment. F, a C corporation partner with a 50 percent interest in Partnership, received 50 percent of all capital losses for 2020. As part of the modification process described in § 301.6225–2(d)(2) F files an amended return for 2020 taking into account F's share of the partnership adjustment ($1 million reduction in capital loss) and pays the tax owed for 2020, including interest. Also as part of the modification process, F also files amended returns for 2021 and 2022 and paid additional tax (and interest) for these years because the reduction in capital loss for 2020 affected the tax due from F for 2021 and 2022. See § 301.6225–2(d)(2)(iv). The reduction of the capital loss in 2020 did not affect any other taxable year of F. The IRS approves the modification with respect to F and on June 1, 2023, mails an FPA to Partnership for Partnership's 2020 year reflecting the partnership adjustment reducing the capital loss in the amount of $2 million. The FPA also reflects the modification to the imputed underpayment based on the amended returns filed by F taking into account F's share of the reduction in the capital loss. Partnership makes a timely election under section 6226 in

accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and files a timely petition in the Tax Court challenging the partnership adjustments. The Tax Court upholds the determinations in the FPA and the decision regarding Partnership's 2020 tax year becomes final on December 15, 2025. Pursuant to § 301.6225–2(b)(1), the partnership adjustments are finally determined on December 15, 2025. On February 1, 2026, Partnership files the statements described under § 301.6226–2 with the IRS and furnishes to its partners statements reflecting their shares of the partnership adjustment. The statement issued to F reflects F's share of the partnership adjustment for Partnership's 2020 taxable year as finally determined by the Tax Court. The statement shows F's share of the capital loss reported on Partnership's return for the reviewed year of $1 million and the $1 million reduction in capital losses taken into account by F as part of the amended return modification. The statement shows that F's safe harbor amount, as determined under § 301.6226–2(g), is $0 ([$1 million adjustment less the $1 million taken into account in the amended return] multiplied by 40 percent). F elects to pay the safe harbor amount, which is zero.

(h) *Applicability date*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22T in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22T is in effect.

■ **Par. 14.** Section 301.6226–4 is added to read as follows:

§ 301.6226–4 Adjustments to partners' outside bases and capital accounts and a partnership's basis and book value in property.—[Reserved]

■ **Par. 15.** Section 301.6227–1 is added to read as follows:

§ 301.6227–1 Administrative adjustment request by partnership.

(a) *In general.* A partnership may file a request for an administrative adjustment with respect to one or more items of income, gain, loss, deduction, or credit of the partnership (as defined in § 301.6221(a)–1(b)(1)) and any partner's distributive share thereof (as described in § 301.6221(a)–1(b)(2)) for any partnership taxable year. When filing an administrative adjustment request (AAR), the partnership must determine whether the adjustments requested in the AAR result in an imputed underpayment (as defined in § 301.6241–1(a)(3)) in accordance with § 301.6227–2(a) for the reviewed year (as defined in § 301.6241–1(a)(8)). If the adjustments requested in the AAR result in an imputed underpayment, the partnership must take the adjustments into account under the rules described in § 301.6227–2(b) unless the partnership makes an election under § 301.6227–2(c), in which case each reviewed year partner (as defined in § 301.6241–1(a)(9)) must take the adjustments into account in accordance with § 301.6227–3. If the adjustments requested in the AAR do not result in an imputed underpayment (as determined under § 301.6227–2(a)), such adjustments must be taken into account by the reviewed year partners (as defined in § 301.6241–1(a)(9)) in accordance with § 301.6227–3. A partner may not file an AAR except if the partner is doing so on behalf of the partnership in the partner's capacity as the partnership representative designated under section 6223 or if the partner is a partnership-partner (as defined in § 301.6241–1(a)(7)) filing an AAR under § 301.6227–3(c). In addition, a partnership may not file an AAR solely for the purpose of allowing the partnership to change the designation of a partnership representative. See § 301.6223–1 (regarding designation of the partnership representative).

(b) *Time for filing an AAR.* An AAR may only be filed by a partnership with respect to a partnership taxable year after a partnership return for that taxable year has been filed with the Internal Revenue Service (IRS). A partnership may not file an AAR with respect to a partnership taxable year more than three years after the later of the date the partnership return for such partnership taxable year was filed or the last day for filing such partnership return (determined without regard to extensions). In no event may an AAR be filed for a partnership taxable year after a notice of administrative proceeding with respect to such taxable year has been mailed by the IRS under section 6231.

(c) *Form and manner for filing an AAR*—(1) *In general.* An AAR, including any required statements, forms, and schedules as described in this section, must be filed with the IRS in accordance with the forms, instructions, and other guidance prescribed by the IRS, and must be signed under penalties of perjury by the partnership representative (as defined in section 6223(a) and the regulations thereunder).

(2) *Contents of AAR filed with the IRS.* A valid AAR filed with the IRS must include—

(i) The adjustments requested,

(ii) If a reviewed year partner is required to take into account the adjustments requested under § 301.6227–3, statements described in paragraph (e) of this section, including any transmittal with respect to such statements required by forms, instructions, and other guidance, and

(iii) Other information prescribed by the IRS in forms, instructions, or other guidance.

(d) *Copy of statement furnished to reviewed year partners in certain cases.* If a reviewed year partner is required to take into account adjustments requested in an AAR under § 301.6227–3, the partnership must furnish a copy of the statement described in paragraph (e) of this section to the reviewed year partner to whom the statement relates in accordance with the forms, instructions and other guidance prescribed by the IRS. If the partnership mails the statement, it must mail the statement to the current or last address of the reviewed year partner that is known to the partnership. The statement must be furnished to the reviewed year partner on the date the AAR is filed with the IRS.

(e) *Statements*—(1) *Contents.* Each statement described in this paragraph (e) must include the following information:

(i) The name and correct TIN of the reviewed year partner to whom the statement is being furnished;

(ii) the current or last address of the partner that is known to the partnership;

(iii) the reviewed year partner's share of items as originally reported on statements furnished to the partner under section 6031(b) and, if applicable, section 6227;

(iv) the reviewed year partner's share of the adjustments as described under paragraph (c)(2) of this section;

(v) the date the statement is furnished to the partner;

(vi) the partnership taxable year to which the adjustments relate; and

(vii) any other information required by forms, instructions, and other guidance prescribed by the IRS.

(2) *Determination of each partner's share of adjustments*—(i) *In general.* Except as provided in paragraphs (e)(2)(ii) and (iii) of this section, each reviewed year partner's share of the adjustments requested in the AAR is determined in the same manner as each adjusted item was originally allocated to the reviewed year partner on the partnership return for the reviewed year.

(ii) *Adjusted item not reported on the partnership's return for the reviewed year.* Except as provided in paragraph (e)(2)(iii) of this section, if the adjusted item was not reported on the partnership return for the reviewed year, each reviewed year partner's share

of the adjustments must be determined in accordance with how such items would have been allocated under rules that apply with respect to partnership allocations, including under the partnership agreement.

(iii) *Allocation adjustments.* If an adjustment involves allocation of an item to a specific partner or in a specific manner, including a reallocation of an item, the reviewed year partner's share of the adjustment requested in the AAR is determined in accordance with the AAR.

(f) *Binding nature of AAR.* Filing an AAR as described in paragraph (c) of this section and furnishing statements as described in paragraph (d) of this section are actions of the partnership under section 6223 and the regulations thereunder. Accordingly, unless determined otherwise by the IRS, each partner's share of the adjustments set forth in a statement described in paragraph (e) of this section are binding on the partner pursuant to section 6223. A partner may not treat items on the partner's return inconsistently with how those items are treated on the statement that is filed with the IRS under paragraph (c) of this section. See § 301.6222–1(c)(2) (regarding items the treatment of which a partner is bound to under section 6223).

(g) *Administrative proceeding for a taxable year for which an AAR is filed.* Within the period described in section 6235, the IRS may initiate an administrative proceeding with respect to the partnership for any partnership taxable year regardless of whether the partnership filed an AAR with respect to such taxable year and may adjust any item subject to adjustment under subchapter C of chapter 63 of the Internal Revenue Code, including any item adjusted in an AAR filed by the partnership. The amount of an imputed underpayment determined by the partnership under § 301.6227–2(a)(1), including any modifications determined by the partnership under § 301.6227–2(a)(2), may be re-determined by the IRS.

(h) Notice of change to the amount of creditable foreign tax expenditures. [Reserved]

(i) *Applicability date*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22T in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22T is in effect.

■ **Par. 16.** Section 301.6227–2 is added to read as follows:

§ 301.6227–2 Determining and accounting for adjustments requested in an administrative adjustment request by the partnership.

(a) Determining whether adjustments result in an imputed underpayment—(1) *Determination of the imputed underpayment.* The determination of whether adjustments requested in an administrative adjustment request (AAR) result in an imputed underpayment (as defined in § 301.6241–1(a)(3)) in the reviewed year (as defined in § 301.6241–1(a)(8)) and the determination of the amount of the imputed underpayment, if any, is made in accordance with the rules under § 301.6225–1.

(2) *Modification of imputed underpayment for purposes of this section.* A partnership may request modification of the amount of the imputed underpayment determined under paragraph (a)(1) of this section using only the provisions under § 301.6225–2(d)(3) (regarding tax-exempt partners), § 301.6225–2(d)(4) (regarding modification of applicable tax rate), § 301.6225–2(d)(5) (regarding specified passive activity losses), § 301.6225–2(d)(7) (regarding certain qualified investment entities), or as provided in forms, instructions, or other guidance prescribed by the IRS with respect to AARs. The partnership may not modify an imputed underpayment resulting from adjustments requested in an AAR except as described in this paragraph (a)(2). When requesting modification of the amount of an imputed underpayment under this paragraph (a)(2):

(i) The partnership is not required to seek the approval from the Internal Revenue Service (IRS) prior to modifying the amount of any imputed underpayment under paragraph (a)(1) of this section as reported on the AAR; and

(ii) As part of the AAR filed with the IRS in accordance with forms, instructions, and other guidance, the partnership must—

(A) Notify the IRS of any modification,

(B) Describe the effect of the modification on the imputed underpayment,

(C) Provide an explanation of the basis for such modification, and

(D) Provide documentation to support the partnership's eligibility for the modification.

(b) *Adjustments resulting in an imputed underpayment taken into account by the partnership*—(1) *In general.* Except in the case of an election under paragraph (c) of this section, a partnership must pay any imputed underpayment (as determined and modified under paragraph (a) of this section) resulting from the adjustments requested in an AAR on the date the partnership files the AAR. For the rules applicable to the partnership's expenditure for the imputed underpayment, as well as any penalties and interest paid by the partnership with respect to the imputed underpayment, see § 301.6241–4.

(2) *Penalties and interest.* The IRS may impose a penalty, addition to tax, and additional amount with respect to an imputed underpayment determined under this section in accordance with section 6233(a)(3) (penalties determined from the reviewed year). In addition, the IRS may impose a penalty, addition to tax, and additional amount with respect to a failure to pay an imputed underpayment on the date an AAR is filed in accordance with section 6233(b)(3) (penalties with respect to the adjustment year return). Interest on the imputed underpayment is determined under chapter 67 for the period beginning on the date after the due date of the partnership return for the reviewed year (as defined in § 301.6241–1(a)(8)) (determined without regard to extension) and ending on the earlier of the date payment of the imputed underpayment is made, or the due date of the partnership return for the adjustment year (as defined in § 301.6241–1(a)(1)). See section 6233(a)(2). In the case of any failure to pay an imputed underpayment before the due date of the partnership return for the adjustment year, interest is determined in accordance with section 6233(b)(2).

(c) *Election to have adjustments resulting in an imputed underpayment taken into account by reviewed year partners.* In lieu of paying the imputed underpayment under paragraph (b) of this section, the partnership may elect to have each reviewed year partner (as defined in § 301.6241–1(a)(9)) take into account the adjustments requested in the AAR in accordance with § 301.6227–3. A partnership makes an election under this paragraph (c) at the time the AAR is filed in accordance with the forms, instructions, and other guidance prescribed by the IRS. If the partnership makes a valid election in accordance with this paragraph (c), the partnership is not required to pay the imputed underpayment resulting from the adjustments requested in the AAR. Rather, each reviewed year partner must take into account their share of the adjustments requested in the AAR in accordance with § 301.6227–3. If an

election is made under this paragraph (c), modifications requested under paragraph (a)(2) of this section are disregarded and all adjustments requested in the AAR must be taken into account by each reviewed year partner in accordance with § 301.6227–3.

(d) *Adjustments not resulting in an imputed underpayment.* If the adjustments requested in an AAR do not result in an imputed underpayment (as determined under paragraph (a) of this section), the partnership must furnish statements to each reviewed year partner and file such statements with the IRS in accordance with § 301.6227–1. Each reviewed year partner must take into account its share of the adjustments requested in the AAR in accordance with § 301.6227–3.

(e) *Applicability date*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22T in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22T is in effect.

■ **Par. 17.** Section 301.6227–3 is added to read as follows:

§ 301.6227–3 Adjustments requested in an administrative adjustment request taken into account by reviewed year partners.

(a) *In general.* Each reviewed year partner (as defined in § 301.6241–1(a)(9)) is required to take into account its share of adjustments requested in an administrative adjustment request (AAR) if the partnership makes an election under § 301.6227–2(c) with respect to such AAR. In addition, each reviewed year partner must take into account its share of adjustments requested in an AAR that do not result in an imputed underpayment (as defined in § 301.6241–1(a)(3)) as determined under § 301.6227–2(a). Each reviewed year partner receiving a statement furnished in accordance with § 301.6227–1(b) must take into account adjustments reflected in the statement in the taxable year that includes the date the statement is furnished (reporting year) in accordance with paragraph (b) of this section.

(b) *Adjustments taken into account by the reviewed year partner in the reporting year*—(1) *In general.* A reviewed year partner that is furnished a statement described in paragraph (a) of this section must treat the statement as if it were issued under section 6226(a)(2) and, on or before the due date for the reporting year must pay the additional reporting year tax (as defined in § 301.6226–3(a)), if any, determined after taking into account that partner's share of the adjustments requested in the AAR in accordance with § 301.6226–3. For purposes of this paragraph (b), the rules under § 301.6226–3(c) (regarding the election to pay the safe harbor amount), § 301.6226–3(d)(2) (regarding interest on the safe harbor amount), and § 301.6226–3(d)(4) (regarding the increased rate of interest) do not apply, and the last sentence in § 301.6226–3(b)(1) (regarding the prohibition on correction amounts being less than zero) is disregarded. Nothing in this section entitles any partner to a refund of tax imposed by chapter 1 of subtitle A of the Internal Revenue Code (chapter 1 tax) to which such partner is not entitled. For instance, a partnership-partner (as defined in § 301.6241–1(a)(7)) may not claim a refund with respect to its share of any adjustment.

(2) *No additional reporting year tax due.* A reviewed year partner may reduce chapter 1 tax for the reporting year by the amount determined under paragraph (b)(1) of this section.

(3) *Examples.* The following examples illustrate the rules of this paragraph (b).

Example 1. In 2022, partner A, an individual, received a statement described in paragraph (a) of this section from Partnership with respect to Partnership's 2020 taxable year. Both A and Partnership are calendar taxpayers and A is not claiming any refundable tax credit in 2020. The only adjustment shown on the statement is an increase in ordinary losses. Taking into account the adjustment, A determines that his additional reporting year tax for 2022 (the reporting year) is <$100> (that is, a reduction of $100.) A's chapter 1 tax for 2022 (without regard to any additional reporting year tax) is $150. Applying the rules in paragraph (b)(2) of this section, A's chapter 1 tax for 2022 is reduced to $50 ($150 chapter 1 tax without regard to the additional reporting year tax plus <$100> additional reporting year tax).

Example 2. The facts are the same as in *Example 1* of this paragraph (b)(3), except A's chapter 1 tax for 2022 (without regard to any additional reporting year tax) is $75. Applying the rules in paragraph (b)(2) of this section, A's chapter 1 tax for 2022 is reduced by the <$100> of additional reporting year tax. Accordingly, A's chapter 1 tax for 2022 is $0 ($75 chapter 1 tax without regard to any additional reporting year tax plus <$100> of additional reporting year tax), A owes no chapter 1 tax for 2022, and A may make a claim for refund with respect to the overpayment of $25.

(c) *Reviewed year partners that are pass-through partners.*—[RESERVED]

(d) *Applicability date*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22T in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22T is in effect.

■ **Par. 18.** Section 301.6241–1 is added to read as follows:

§ 301.6241–1 Definitions.

(a) *Definitions.* For purposes of subchapter C of chapter 63 of the Internal Revenue Code—

(1) *Adjustment year.* The term *adjustment year* means the partnership taxable year in which—

(i) In the case of an adjustment pursuant to the decision of a court in a proceeding brought under section 6234, such decision becomes final;

(ii) In the case of an administrative adjustment request (AAR) under section 6227, such AAR is made; or

(iii) In any other case, a notice of final partnership adjustment is mailed under section 6231or, if the partnership waives the restrictions under section 6232(b) (regarding limitations on assessment), the date the waiver is executed by the IRS.

(2) *Adjustment year partner.* The term *adjustment year partner* means any person who held an interest in a partnership at any time during the adjustment year.

(3) *Imputed underpayment.* The term *imputed underpayment* means the amount determined in accordance with § 301.6225–1.

(4) *Indirect partner.* The term *indirect partner* means any person who has an interest in a partnership through their interest in one or more pass-through partners (as defined in paragraph (a)(5) of this section).

(5) *Pass-through partner.* The term *pass-through partner* means a pass-through entity that holds an interest in a partnership. A pass-through entity is a partnership as described in § 301.7701–2(c)(1) (including a foreign entity that is classified as a partnership under § 301.7701–3(b)(2)(i)(A) or (c)), an S corporation, a trust (other than a trust described in the next sentence), and a decedent's estate. For purposes of this paragraph (a)(5), a pass-through entity is not a disregarded entity described in § 301.7701–2(c)(2)(i) or a trust that is wholly owned by only one person, whether the grantor or another person, and the trust reports the owner's information to payors under § 1.671–4(b)(2)(i)(A).

(6) *Partnership adjustment.* The term *partnership adjustment* means any adjustment to any item of income, gain, loss, deduction, or credit of a partnership (as defined in

§ 301.6221(a)–1(b)(1)), or any partner's distributive share thereof (as described in § 301.6221(a)–1(b)(2)).

(7) *Partnership-partner.* The term *partnership-partner* means a partnership that holds an interest in another partnership.

(8) *Reviewed year.* The term *reviewed year* means the partnership taxable year to which a partnership adjustment relates.

(9) *Reviewed year partner.* The term *reviewed year partner* means any person who held an interest in a partnership at any time during the reviewed year.

(10) *Tax attribute.* A tax attribute is anything that can affect, with respect to a partnership or a partner, the amount or timing of an item of income, gain, loss, deduction, or credit (as defined in § 301.6221(a)–1(b)(1)) or that can affect the amount of tax due in any taxable year. Examples of tax attributes include, but are not limited to, basis and holding period, as well as the character of items of income, gain, loss, deduction, or credit and carryovers and carrybacks of such items.

(b) *Applicability date*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22T in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22T is in effect.

■ **Par. 19.** Section 301.6241–2 is added to read as follows:

§ 301.6241–2 Bankruptcy of the Partnership.

(a) *Coordination between Title 11 and proceedings under subchapter C of chapter 63*—(1) *In general.* If a partnership is a debtor in a case under Title 11 of the United States Code (Title 11 case), the running of any period of limitations under section 6235 with respect to the time for making a partnership adjustment (as defined in § 301.6241–1(a)(6)) and under sections 6501 and 6502 with respect to the assessment or collection of any imputed underpayment (as defined in § 301.6241–1(a)(3)) determined under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) is suspended during the period the Internal Revenue Service (IRS) is prohibited by reason of the Title 11 case from making the adjustment, assessment, or collection until—

(i) 60 days after the suspension ends, for adjustments or assessments, and

(ii) 6 months after the suspension ends, for collection.

(2) *Interaction with section 6232(b).* The filing of a proof of claim or request for payment (or the taking of any other action) in a Title 11 case is not be treated as an action prohibited by section 6232(b) (regarding limitations on assessment).

(3) *Suspension of the time for judicial review.* In a Title 11 case, the running of the period specified in section 6234 (regarding judicial review of partnership adjustments) is suspended during the period during which the partnership is prohibited by reason of the Title 11 case from filing a petition under section 6234, and for 60 days thereafter.

(4) *Actions not prohibited.* The filing of a petition under Title 11 does not prohibit the following actions:

(i) an administrative proceeding with respect to a partnership under subchapter C of chapter 63;

(ii) the mailing of any notice with respect to a proceeding with respect to a partnership under subchapter C of chapter 63, including:

(A) A notice of administrative proceeding,

(B) a notice of proposed partnership adjustment, and

(C) a notice of final partnership adjustment;

(iii) a demand for tax returns;

(iv) the assessment of any tax, including the assessment of any imputed underpayment with respect to a partnership; and

(v) the issuance of notice and demand for payment of an assessment under subchapter C of chapter 63 (but see section 362(b)(9)(D) of Title 11 of the United States Code regarding the timing of when a tax lien takes effect by reason of such assessment).

(b) *Applicability date*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22T in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22T is in effect.

■ **Par. 20.** Section 301.6241–3 is added to read as follows:

§ 301.6241–3 Treatment where a Partnership Ceases to Exist.

(a) *Former partners take adjustments into account*—(1) *In general.* Except as described in paragraphs (a)(2) and (a)(3) of this section, if the Internal Revenue Service (IRS) determines that any partnership (including a partnership-partner as defined in § 301.6241–1(a)(7)) ceases to exist (as defined in paragraph (b)(2) of this section) before any partnership adjustment (as defined in § 301.6241–1(a)(6)) under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) takes effect (as described in paragraph (c) of this section), the partnership adjustment is taken into account by the former partners (as described in paragraph (d) of this section) of the partnership in accordance with paragraph (e) of this section.

(2) *Partnership no longer liable for any amounts resulting from a partnership adjustment.* A partnership that ceases to exist is no longer liable for any amounts resulting from a partnership adjustment required to be taken into account by a former partner under this section.

(3) *Partnerships making an election under section 6221(b).* The former partners of a partnership that ceases to exist are not required to take a partnership adjustment into account under this section if the partnership has an election under section 6221(b) in effect for the partnership taxable year that includes the end of the reviewed year of the partnership subject to a proceeding to which such adjustment relates.

(b) *Determination that partnership ceases to exist*—(1) *In general.* For purposes of this section, the IRS may, in its sole discretion, make a determination that a partnership ceases to exist for purposes of this section, but the IRS is not required to do so even if the definition in paragraph (b)(2) of this section applies with respect to such partnership. If the IRS determines that a partnership ceases to exist, the IRS will notify the partnership and the former partners (as defined in paragraph (d) of this section), in writing, within 30 days of such determination using the last known address of the partnership and the former partners.

(2) *Cease to exist defined*—(i) *In general.* The IRS may determine that a partnership ceases to exist if the partnership terminates within the meaning of section 708(b)(1)(A), or does not have the ability to pay, in full, any amount due under the provisions of subchapter C of chapter 63 for which the partnership is or becomes liable. For purposes of this section, a partnership does not have the ability to pay if the IRS determines that the account with respect to the partnership is not collectible based on the information the IRS has at the time of such determination. For purposes of this section, a partnership does not cease to exist solely because—

(A) The partnership has a technical termination under section 708(b)(1)(B);

(B) A valid election under section 6226 and the regulations thereunder is in effect with respect to any imputed underpayment (as defined in § 301.6241–1(a)(3)); or

(C) The partnership has not paid any amount required to be paid under subchapter C of chapter 63.

(ii) *Year in which a partnership ceases to exist.* If a partnership terminates under section 708(b)(1)(A), the partnership ceases to exist on the last day of the partnership's final taxable year. If a partnership does not have the ability to pay, the partnership ceases to exist on the date that the IRS makes a determination under paragraph (b)(2)(i) of this section that the partnership ceases to exist.

(iii) *Limitation on IRS determination that partnership ceases to exist.* In no event may the IRS determine that a partnership ceases to exist with respect to a partnership adjustment after the expiration of the period of limitations on collection applicable to the amount due resulting from such adjustment.

(c) *Partnership adjustment takes effect*—(1) *Full payment of amounts resulting from a partnership adjustment.* For purposes of this section, a partnership adjustment under subchapter C of chapter 63 takes effect when there is full payment of amounts resulting from a partnership adjustment. For purposes of this section, *full payment of amounts resulting from a partnership adjustment* means all amounts due under subchapter C of chapter 63 resulting from the partnership adjustment are fully paid by the partnership.

(2) *Partial payment of amount due by the partnership.* If a partnership pays part, but not all, of any amount due resulting from a partnership adjustment before the partnership ceases to exist, the former partners of the partnership that has ceased to exist are not required to take into account any partnership adjustment to the extent amounts have been paid by the partnership with respect to such adjustment. The notification that the IRS has determined that the partnership has ceased to exist will include information regarding the portion of the partnership adjustments with respect to which appropriate amounts have not already been paid by the partnership and therefore must be taken into account by the former partners (described in paragraph (d) of this section) in accordance with paragraph (e) of this section.

(d) *Former partners*—(1) *Adjustment year partners*—(i) *In general.* Except as described in paragraphs (d)(1)(ii) and (d)(2) of this section, the term *former partners* means the adjustment year partners (as defined in § 301.6241–1(a)(2)) of a partnership that ceases to exist for the partnership taxable year to which the partnership adjustment relates.

(ii) *Partnership-partner ceases to exist.* If the adjustment year partner is a partnership-partner that the IRS has determined ceased to exist, the partners of such partnership-partner during the partnership-partner's taxable year that includes the end of the adjustment year (as defined in § 301.6241–1(a)(1)) of the partnership that is subject to a proceeding under subchapter C of chapter 63 are the former partners for purposes of this section. If the partnership-partner ceased to exist before the partnership-partner's taxable year that includes the end of the adjustment year of the partnership that is subject to a proceeding under subchapter C of chapter 63, the former partners for purposes of this section are the partners of such partnership-partner during the partnership taxable year for which the final partnership return of the partnership-partner under section 6031 is filed.

(2) *No adjustment year partners.* If there are no adjustment year partners of a partnership that ceases to exist, the term *former partners* means the partners of the partnership during the last taxable year for which a partnership return under section 6031 was filed with respect to such partnership. For instance, if a partnership terminates under section 708(b)(1)(A) (and therefore ceases to exist under paragraph (b)(2)(i) of this section) before the adjustment year and files a final partnership return for the partnership taxable year of such partnership, the former partners for purposes of this section are the partners of the partnership during the partnership taxable year for which a final partnership return is filed.

(e) *Taking adjustments into account*—(1) *In general.* For purposes of paragraph (a) of this section, a former partner of a partnership that ceases to exist takes a partnership adjustment into account as if the partnership had made an election under section 6226 and the regulations thereunder (regarding the alternative to payment of the imputed underpayment). A former partner must take into account the former partner's share of a partnership adjustment as set forth in the statement described in paragraph (e)(2) of this section in accordance with § 301.6226–3.

(2) *Statements furnished to former partners.* If a partnership is notified by the IRS that the partnership has ceased to exist as described in paragraph (b)(1) of this section, the partnership must furnish to each former partner a statement reflecting such former partner's share of the partnership adjustment required to be taken into account under this section and file a copy of such statement with the IRS in accordance with the rules under § 301.6226–2, except that—

(i) the adjustments are taken into account by the applicable former partner (as described in paragraph (d) of this section), rather than the reviewed year partners (as defined in § 301.6241–1(a)(9)), and

(ii) the partnership must furnish statements to the former partners and file the statements with the IRS no later than 30 days after the date of the notification to the partnership that the IRS has determined that the partnership has ceased to exist.

(3) *Authority to issue statements.* If any statements required by paragraph (e) of this section are not timely furnished to a former partner and filed with the IRS in accordance with paragraph (e)(2)(ii) of this section, the IRS may notify the former partner in writing of such partner's share of the partnership adjustments based on the information reasonably available to the IRS at the time such notification is provided. For purposes of paragraph (e) of this section, a notification to a former partner under this paragraph (e)(3) is treated the same as a statement required to be furnished and filed under paragraph (e)(2) of this section.

(f) *Examples.* The following examples illustrate the provisions of this section. For purposes of the examples, all partnerships and partners are calendar year taxpayers and no partnership has an election under section 6221(b) in effect with respect to any taxable year.

Example 1. The IRS initiates a proceeding under subchapter C of chapter 63 with respect to the 2020 partnership taxable year of Partnership. During 2023, in accordance with section 6235(b), Partnership extends the period of limitations on adjustments under section 6235(a) until December 31, 2025. On February 1, 2025, the IRS mails Partnership a notice of final partnership adjustment (FPA) that determines partnership adjustments that result in a single imputed underpayment. Partnership does not timely file a petition under section 6234 and does not make a valid election under section 6226. On May 1, 2026, the IRS mails Partnership notice and demand for payment of the amount due resulting from the adjustments determined in the FPA. Partnership fails to make a payment. On September 1, 2029, IRS determines Partnership ceases to exist for purposes of this section because the IRS has determined that Partnership does not have the ability to pay under paragraph (b)(2)(i) of this section. Under § 301.6241–1(a)(1), the adjustment year is 2025 and A and B, both individuals, are the only adjustment year

partners of Partnership during 2025. Accordingly, under paragraph (d)(1) of this section, A and B are former partners. Therefore, A and B are required to take their share of the partnership adjustments determined in the FPA into account under paragraph (e) of this section.

Example 2. The IRS initiates a proceeding under subchapter C of chapter 63 with respect to the 2020 partnership taxable year of Partnership. G, a partnership, is a partner of Partnership during 2020. On February 3, 2025, the IRS mails Partnership an FPA that determines partnership adjustments that result in a single imputed underpayment. Partnership does not timely file a petition under section 6234, but does make a timely election under section 6226. On May 31, 2025, Partnership timely files and furnishes a statement to G as required by section 6226 and the regulations thereunder. G terminated under section 708(b)(1)(A) on December 31, 2024. On June 1, 2026, the IRS determines that G ceased to exist in 2024 for purposes of this section in accordance with paragraph (b)(2)(i) of this section. J and K, individuals, were the only partners of G during 2024. Therefore, under paragraph (d)(1)(ii) of this section, J and K, the partners of G during G's 2024 partnership taxable year, are the former partners of G for purposes of this section. Therefore, J and K are required to take into account their share of the adjustments contained in the statement furnished by Partnership to G in accordance with paragraph (e) of this section.

(g) *Applicability date*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22T in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22T is in effect.

■ **Par. 21.** Section 301.6241–4 is added to read as follows:

§ 301.6241–4 Payments nondeductible.

(a) *Payments nondeductible.* No deduction is allowed under subtitle A of the Internal Revenue Code for any payment required to be made by a partnership under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63). Payment by a partnership of any amount required to be paid under subchapter C of chapter 63, including any imputed underpayment (as defined in § 301.6241–1(a)(3)), any amount under § 301.6226–3, or interest, penalties, additions to tax, or additional amounts with respect to an imputed underpayment or any amount under § 301.6226–3, is treated as an expenditure described in section 705(a)(2)(B).

(b) *Applicability date*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22T in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22T is in effect.

■ **Par. 22.** Section 301.6241–5 is added to read as follows:

§ 301.6241–5 Extension to Entities Filing Partnership Returns.

(a) *Entities filing a partnership return.* Except as described in paragraph (c) of this section, an entity that files a partnership return for any taxable year is subject to the provisions of subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) and the regulations thereunder with respect to such taxable year even if it is determined that the person filing the partnership return was not a partnership for such taxable year. Accordingly, any item of income, loss, gain, deduction, or credit (as defined in § 301.6221(a)–1(b)(1)), any partner's distributive share thereof (as described in § 301.6221(a)–1(b)(2)), and any person holding an interest in the entity, either directly or indirectly, at any time during that taxable year are subject to the provisions of subchapter C of chapter 63 and the regulations thereunder for such taxable year.

(b) *Partnership return filed but no entity found to exist.* Paragraph (a) of this section also applies where a partnership return is filed for a taxable year, but the IRS determines that no entity existed at all for such taxable year. For purposes of applying paragraph (a) of this section, the partnership return is treated as if it were filed by an entity.

(c) *Exceptions.* Paragraph (a) of this section does not apply to—

(1) Entities for any taxable year for which an election under section 6221(b) is in effect, treating the return as if it were filed by a partnership for the taxable year to which the election relates, and

(2) Entities for any taxable year for which a partnership return was filed for the sole purpose of making the election described in section 761(a) (regarding election out of subchapter K for certain unincorporated organizations).

(d) *Applicability date*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22T in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22T is in effect.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

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