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Rules and Regulations

Federal Register

Vol. 83, No. 159

Thursday, August 16, 2018

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1412

RIN 0560–AI40

Seed Cotton Changes to Agriculture Risk Coverage (ARC), Price Loss Coverage (PLC) Programs

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the eligibility requirements, enrollment procedures, and payment calculation for ARC and PLC required to conform with the Bipartisan Budget Act of 2018 (BBA). BBA amends the Agricultural Act of 2014 (the 2014 Farm Bill) to add seed cotton as a covered commodity and remove generic base acres from ARC and PLC. This rule also amends provisions to include seed cotton yields, allocation of generic base acres, election of ARC-County Option (ARC–CO) or PLC for seed cotton base acres, and enrollment for 2018. This rule also makes some minor, clarifying changes to the administration section.

DATES:

Effective Date: August 16, 2018.

2018 ARC and PLC signup deadline: September 28, 2018.

FOR FURTHER INFORMATION CONTACT: Brent Orr; telephone, (202) 720–7641. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The ARC Program is an income support program which provides payments on historical base acres when actual crop revenue for a covered commodity declines below a specified guarantee level. The PLC Program provides payments on historical base acres when the price for a covered commodity declines below its ''reference price.'' Eligible producers were required to make a decision to participate in either ARC or PLC, but not both, for the 2014 through 2018 crop years. ARC and PLC are Commodity Credit Corporation (CCC) programs administered by the Farm Service Agency (FSA).

The regulation in 7 CFR part 1412 as implemented in 2014 for the ARC and PLC Programs specified covered commodities authorized by the 2014 Farm Bill (Pub L. 113–79; 7 U.S.C. 9011–9019). BBA amends the 2014 Farm Bill by adding seed cotton as a ''covered commodity'' for the 2018 crop year. Since seed cotton will be included in the existing ARC or PLC programs, FSA must establish certain program values including yields and prices to implement the changes.

Upland cotton, which had previously been a covered commodity under prior FSA administered CCC commodity programs, was no longer a covered commodity beginning with the 2014 Farm Bill; therefore, producers with historical upland cotton base acres were ineligible for assistance under ARC and PLC. Base acres of upland cotton under the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) in effect as of September 30, 2013, subject to any adjustment or reduction, became ''generic base acres'' beginning with the 2014 crop year. Under terms of BBA, if a covered commodity, including seed cotton, was not planted or prevented from being planted on the farm during the 2009 through 2016 years, the generic base acres become unassigned base acres, which are not eligible for any ARC or PLC benefits. Generic base acres no longer exist beginning with the 2018 crop year.

Seed Cotton Changes; PLC Yield; Generic Base Acres Allocation

In order for an owner to take advantage of the BBA provisions for seed cotton, BBA specifies that a covered commodity, including seed cotton, must have been planted or prevented from being planted on the farm during the 2009 through 2016 years. If the farm had land enrolled under a Conservation Reserve Program contract and base acres were reduced as a result of that enrollment during the 2009 through 2016 years, the owner of that farm may allocate generic base acres to seed cotton base acres or other base acres based on the provisions of BBA.

PLC requires a reference price for all covered commodities; BBA has established a reference price for seed cotton of $0.367 per pound.

Determining a covered commodity yield is a necessary component to PLC. As amended, the 2014 Farm Bill and 7 CFR 1412.31 provide that the farm PLC yield for seed cotton will be initially set at 2.4 times the payment yield for upland cotton established under the 2008 Farm Bill (7 U.S.C. 8714(e)(3)). As amended, the 2014 Farm Bill and 7 CFR 1412.33, specify that any current owner of the farm has a one-time option to update the PLC yield. Any current owner of a farm may update the PLC yield, which was the counter-cyclical payment yield under the former Direct and Counter-cyclical Program, by certifying pounds of upland cotton lint in years in which upland cotton was planted on base acres from 2008 through 2012, which will then be averaged. Years in which the producer had no planted acres are not included in the simple average computation. The average yield for 2008 through 2012, excluding years in which no upland cotton was grown, will be multiplied by 90 percent, and the result will be multiplied by 2.4 to obtain a new PLC payment yield of pounds of seed cotton.

In addition to updating the payment yield, current owners of a farm with generic base acres will be allowed to determine how those generic base acres are allocated as base acres of other covered commodities on the farm. As specified in BBA and in § 1412.25, there are three options as follows; the producers may choose only one for allocating generic base acres on the farm:

1. Multiply the number of generic base acres in crop year 2018 by 80 percent to determine a total for seed cotton base acres. The remaining 20 percent will become unassigned base acres.

2. If a farm has history of planting upland cotton from 2009 through 2012 and the simple average of planted and prevented from being planted upland cotton during that time period is greater than 80 percent of the generic base acre total in crop year 2018, generic base acres may be allocated to seed cotton

base acres based on that simple average, not to exceed 100 percent of the generic base acres on the farm. If the simple average is less than 100 percent of the number of generic base acres, the residual generic base acres will become unassigned base acres.

3. Allocate the generic base acres on the farm to the 4-year simple average of the planted and prevented from planted covered commodities on the farm during the 2009 through 2012 crop years. The allocation is based on the share of each covered commodity in the total of covered commodities planted on the farm multiplied by the number of generic base acres on the farm. Years in which there were no covered commodities planted on generic acres will be used in the calculation of the simple average. Using this option eliminates unassigned base acres on the farm. For example:

a. A farm has 100 cropland acres, 100 generic base acres, and had the following planted acres:

○ For 2009, 25 acres of upland cotton and 75 acres of corn;

○ For 2010, 75 acres of upland cotton and 25 acres of corn;

○ For 2011, no acres of covered commodities; and

○ For 2012, 100 acres of upland cotton.

b. The simple average of the two planted covered commodities is 25 acres of corn and 50 acres of upland cotton.

c. Corn, from b. above, is 33.33 percent of the total covered commodities planted on the farm (25 divided by 75 equals 33.33 percent), leaving 66.67 percent planted to upland cotton.

d. Completing the calculation, 33.33 percent times 100 generic base acres equals 33.33 base acres of corn and 66.67 percent multiplied by 100 generic base acres equals 66.67 base acres of seed cotton.

If an owner fails to make an allocation of generic base acres and has a covered commodity, including seed cotton, that was planted or prevented from being planted during the 2009 through 2016 crop years, seed cotton base acres will be determined by FSA using the first option listed above, as is required by BBA.

PLC and ARC–CO Election, Allocation by FSA and Enrollment

After the yield update and base acre allocation is completed, all current producers on a farm with seed cotton base acres, except for farms having a valid ARC-Individual Farm Option (ARC–IC) election, must affirmatively and unanimously elect PLC or ARC–CO for seed cotton base acres during the single election period following a similar method to the previous election process in 2015. As required by BBA, if a unanimous election is not made, the producers on the farm will be deemed to have elected PLC for the seed cotton base acres for the 2018 crop year as specified in 7 CFR 1412.74; if the farm is enrolled for 2018, it will be deemed to have PLC or ARC–CO benefits, as may be applicable for any covered commodity (including seed cotton), based on any valid or default election on the farm. This provision is specified in the 2014 Farm Bill and is not changed by BBA; neither FSA nor CCC has any discretion to specify a different policy for farms that do not have a valid election made during the election period. During the previous election period under the 2014 Farm Bill, the producers on farms with generic base acres had the opportunity to make an election on all 21 covered commodities or have a default election of PLC apply; those elections remain in place and therefore, for the 2018 crop year it will only be necessary for all current producers on the farm to make an election of PLC or ARC–CO for seed cotton base acres. New elections for ARC–IC or for other covered commodities will not be permitted. Farms having a valid election of ARC–IC will continue to have ARC–IC as the election for the entire farm and for all covered commodities including seed cotton that was added as a covered commodity effective with the 2018 crop year for the life of the 2014 Farm Bill.

Implementing these changes is a multi-step process and all steps must be completed in order by the appropriate person or legal entity as follows:

1. FSA will make a determination that a covered commodity was planted or prevented planted on the farm from 2009 through 2016;

2. FSA will make a determination of the planting history of covered commodities on the farm from 2008 through 2012;

• 2008 through 2012 is for calculating a seed cotton PLC yield, and

• 2009 through 2012 is for determining how generic base acres on a farm may be allocated;

3. A current owner will make an allocation of generic base acres according to § 1412.25;

4. A current owner will make a determination of the PLC yield and update of that yield according to 7 CFR 1412.31;

5. The current producer(s) will make an election of either PLC or ARC–CO for seed cotton base acres according to § 1412.71; and

6. The current producer(s) will enroll the applicable farm for the 2018 crop year according to § 1412.41.

As indicated above, the last step in the multi-step process is to enroll the farm for 2018. To participate in 2018, all eligible producers on farms must enroll following allocation and election to be potentially eligible for PLC and ARC benefits. BBA was enacted on February 9, 2018, and 2018 PLC and ARC enrollment had already begun. However, because BBA changed the conditions of contract participation for any farms having generic base acres, all farms having generic base acres that previously enrolled for 2018 must go through the process outlined above and, after that process is completed, reenroll the farm for 2018. Previous 2018 enrollments of farms having generic base acres will not be recognized as valid, as the provisions of BBA eliminate generic base acres. CCC has no authority to enter into 2018 contracts having generic base acres. As was the case with previous crop year enrollments, enrollments of portions of a farm are not allowed.

General Eligibility Requirements

The general eligibility requirements are explained in the ARC or PLC contract appendix and in 7 CFR part 1412, except for adding seed cotton to the list of covered commodities.

Sharing Payments

Each eligible producer on a farm will be given the opportunity to enroll in ARC or PLC for a payment share determined to be fair and equitable as agreed to by all the producers on the farm and approved by the county committee. As specified in § 1412.54(b), each producer leasing a farm must provide the FSA county committee with a copy of their written lease or, in the absence of a written lease, must provide a complete written description of the terms and conditions of any oral agreement or lease. The general eligibility requirements are explained in the ARC or PLC contract appendix and on 7 CFR part 1412, except for adding seed cotton to the list of a covered commodity. An owner's or landlord's signature, as applicable, affirming a zero share on a contract may be accepted as evidence of a cash lease between the owner or landlord and tenant, as applicable, as determined by FSA. For farms with seed cotton base acres, such signature or signatures, if entered on the contract to satisfy the requirement of furnishing a written lease, must be entered on the application by September 30, 2018.

Signup Deadline

The signup deadline is September 28, 2018 for 2018 ARC and PLC.

Notice and Comment

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the **Federal Register** and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. This rule involved matters relating to benefits and is therefore being published as a final rule without the prior opportunity for comments. In addition, the regulations to implement the provisions of Title I and the administration of Title I of the 2014 Farm Bill are exempt from the notice and comment provisions of 5 U.S.C. 553 and the Paperwork Reduction Act (44 U.S.C. chapter 35), as specified in section 1601(c)(2) of the 2014 Farm Bill.

Executive Orders 12866, 13563, 13771 and 13777

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

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on *regulations.gov.*

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' requires that in order to manage the private costs required to comply with Federal regulations that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. The OMB guidance in M–17–21, dated April 5, 2017, specifies that ''transfer rules'' are not covered by Executive Order 13771. Transfer rules are Federal spending regulatory actions that cause only income transfers between taxpayers and program beneficiaries. Therefore, this is considered a transfer rule by OMB and is not covered by Executive Order 13771.

Cost Benefit Analysis Summary

Estimates of transfer payments from these ARC and PLC programs are based on supply, demand and price conditions and FSA projections for the 2018 crop. Based on the projections, the net increase in 2018-crop ARC and PLC payments is expected to be around $743 million. Allocation of generic base is expected to increase ARC and PLC payments by $1,067 million ($917 million for seed cotton and $150 million for other covered commodities) with offsets of $324 million from eliminating ARC and PLC payments on attributed generic base.

The changes are expected to have marginal impacts on supply, demand, and prices because the impacts are spread across the covered commodities and acreage shifts are expected to represent a small percentage of the respective covered commodity planted acreage. Peanut planted acreage is expected to decrease by approximately 15 percent, but peanut prices are not expected to change significantly because of ample peanut supplies. Peanut acres are expected to shift to other commodities such as corn and soybeans with greater market returns because eliminating generic base decouples ARC and PLC payments from planting decisions. Most seed cotton base acres are expected to elect and enroll in PLC.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, Pub. L. 104–121), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the Administrative Procedure Act or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because neither CCC nor FSA are not required by Administrative Procedure Act or any law to publish a proposed rule for this rulemaking.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). This final rule will revise ARC and PLC, as mandated by BBA, to add a single commodity, seed cotton. The legislative intent for revising ARC and PLC programs is to provide income support to the same group of producers that were previously eligible for the earlier and now-discontinued programs, direct and counter-cyclical payment program and average crop revenue election program. On February 22, 2017, FSA completed an environmental review of ARC and PLC. FSA has determined that the addition of the commodity to the programs does not alter the environmental impacts, as assessed, or the related decisions. Therefore, FSA will not prepare a new environmental evaluation, assessment, or impact statement for this regulatory action.

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

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

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' The Executive Order 13175 requires to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes.

FSA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that required tribal consultation under Executive Order 13175. If a tribe requests consultation, FSA will work with USDA Office of Tribal Relations to ensure meaningful consultation is provided.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

SBREFA

This rule is a major rule under the SBREFA (Pub. L. 104–121). SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. Section 1601(c)(3) of the 2014 Farm Bill provides that the authority in Section 808 of SBREFA be used in implementing the changes required by Title I of the 2014 Farm Bill, as amended, such as for the changes being made by this rule. Consistent with section 1601(c)(3) of the 2014 Farm Bill, FSA therefore finds that it would be contrary to the public interest to delay the effective date of this rule because it would delay implementation of seed cotton as a covered commodity for ARC and PLC as required by the 2014 Farm Bill, as amended. The regulation needs to be effective to provide adequate time for producers to update base acres and yields in preparation for enrollment for 2018. Therefore, this rule is effective on the September 30, 2018.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies are:

10.112—Price Loss Coverage
10.113—Agriculture Risk Coverage

Paperwork Reduction Act of 1995

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c) of the 2014 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 1412

Cotton, Feed grains, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

For the reasons discussed above, CCC amends 7 CFR part 1412 as follows:

PART 1412—AGRICULTURE RISK COVERAGE, PRICE LOSS COVERAGE, AND COTTON TRANSITION ASSISTANCE PROGRAMS

■ 1. The authority citation for part 1412 continues to read as follows:

Authority: 7 U.S.C. 1508b, 7911–7912, 7916, 8702, 8711–8712, 8751–8752, and 15 U.S.C. 714b and 714c.

Subpart A—General Provisions

■ 2. Amend § 1412.1 as follows:
■ a. In paragraph (a), remove the words and punctuation '', generic base acres,'' and add the words and punctuation ''seed cotton;'' immediately before the words ''pulse crops''.
■ b. Revise paragraph (b).
■ c. In paragraph (c), remove the words ''CTAP application or the'';
■ d. In paragraph (d), remove the words ''CTAP application or''; and
■ e. In paragraph (e), remove the words and punctuation ''and for CTAP, assistance under this part will be based on the physical location of the farm, as specified in part 718 of this title''.

The revision reads as follows:

§ 1412.1 Applicability, changes in law, interest, application, and contract provisions.

* * * * *

(b) For crop year 2018, this part specifies how:

(1) Generic base acres are allocated to seed cotton base acres and unassigned base acres (generic base acres are not in effect for crop year 2018);

(2) A payment yield for seed cotton base acres is established;

(3) An election is made on seed cotton base acres; and

(4) Contracts are enrolled with seed cotton base acres.

* * * * *

■ 3. Amend § 1412.2 as follows:
■ a. In paragraph (a), remove the words and punctuation '', PLC, and CTAP'' and add the words ''and PLC'' in their place; and
■ b. Revise paragraphs (e) and (f).

The revisions read as follows:

§ 1412.2 Administration.

* * * * *

(e) The Deputy Administrator has the authority to permit State and county committees to waive or modify any non-statutory deadline specified in this part.

(f) Items of general applicability to program participants, including, but not limited to, application periods, application deadlines, internal operating guidelines issued to State and county offices, prices, yields, and payment factors established for ARC or PLC, are not subject to appeal in accordance with part 780 of this title.

■ 4. Amend § 1412.3 as follows:

■ a. Remove the definitions of ''2014 farm structure'' and ''Application'';

■ b. In the definition of ''Base acres'', revise the last sentence;

■ c. In the definition of ''Contract period'', remove the words ''or application'' and words and punctuation ''or ''application'' '', and remove the word ''the'' immediately before the words ''each program year'';

■ d. Add the definition of ''Counter-cyclical payment yield'' in alphabetical order;

■ e. In the definition of ''Covered commodity'', add the words and punctuation ''seed cotton,'' immediately before the words ''pulse crops'';

■ f. Remove the definition of ''Eligible subsequently planted crop acreage'';

■ g. In the definition of ''Generic base acres'', remove the last two sentences and add in their place one new sentence;

■ h. In the definition of ''Initial crop'', remove the words ''or cotton'';

■ i. In paragraph (3) of the definition of ''Marketing year'', add the words and punctuation '', seed cotton,'' immediately after the word ''Peanuts'';

■ j. In the definition of ''Payment acres'', remove paragraph (3);

■ k. Revise the definition of ''Payment yield'';

■ l. Amend the definition of ''Reference price'' as follows:

■ i. In paragraph (13) remove the word ''and'';

■ ii. In paragraph (14) remove the punctuation ''.'' and add in its place the words and punctuation ''; and''; and

■ iii. Add new paragraph (15);

■ m. Add the definition of ''Seed cotton'' in alphabetical order;

■ n. In the definition of ''Supportive and necessary contractual documents'', remove the words ''or CTAP application''; and

■ o. Add the definition of ''Unassigned base acres'' in alphabetical order.

The revisions and additions read as follows:

§ 1412.3 Definitions.

* * * * *

Base acres * * * The term ''base acres'' includes any unassigned base acres.

* * * * *

Counter-cyclical payment yield means the farm's upland cotton yield as specified in the regulations for 7 CFR part 1412 that were in effect as of September 30, 2013.

* * * * *

Generic base acres * * * For 2018, generic base acres are subject to allocation according to § 1412.25.

* * * * *

Payment yield means for a farm for a covered commodity, the yield established under subpart C of this part.

* * * * *

Reference price * * *

(15) Seed cotton, $0.367 per pound.

* * * * *

Seed cotton means unginned upland cotton that includes both lint and seed.

* * * * *

Unassigned base acres means the number of acres derived from generic base acres where no ARC or PLC payments are generated or earned.

* * * * *

Subpart B—Establishment of Base Acres for a Farm for Covered Commodities

■ 5. Amend § 1412.23 as follows:

■ a. Revise the section heading; and

■ b. In paragraphs (a), (b), and (c), remove the words ''and generic base acres'' in each place they appear.

The revision reads as follows:

§ 1412.23 Base acres, and Conservation Reserve Program.

* * * * *

■ 6. Amend § 1412.24 as follows:

■ a. Revise the section heading;

■ b. In paragraph (a)(1), remove the words and punctuation ''and generic base acres (which are equal to upland cotton base acres used for CTAP)'';

■ c. Revise paragraph (b);

■ d. In paragraph (d)(1), remove the words and punctuation '', including generic base acres (and the equal amount of upland cotton base acres),''; and

■ e. In paragraph (f), remove the words and punctuation ''and generic base acres (resulting in an equal amount of upland cotton base acres)''.

The revisions read as follows:

§ 1412.24 Limitation of total base acres on a farm.

* * * * *

(b) The Deputy Administrator will give the owner of the farm the opportunity to select the base acres against which any reduction required in this section will be made. Absent the owner selecting the base acres for reduction, CCC will apply a pro-rata reduction against the base acres before computing and issuing any payments for the program year when a reduction becomes necessary.

* * * * *

■ 7. Revise § 1412.25 to read as follows:

§ 1412.25 Allocation of generic base acres on a farm and updating of records.

(a) Any or all of the current owner(s) of a farm with generic base acres adjusted as of February 9, 2018, will have a one-time opportunity in an allocation period as announced by FSA, if a covered commodity including upland cotton was planted or prevented from being planted during the 2009 through 2016 crop years, to:

(1) Allocate the farm's generic base acres to seed cotton base acres in a quantity equal to the greater of:

(i) 80 percent of the generic base acres on the farm; or

(ii) The average number of upland cotton acres planted and prevented from being planted on the farm during the 2009 through 2012 crop years, not to exceed the total generic base acres on the farm; or

(2) Allocate base acres for covered commodities, including seed cotton, by applying paragraph (e) of this section.

(b) Under no circumstances will the allocation of generic base acres on a farm as specified in paragraph (a) of this section result in any increase in total base acres on a farm. Additionally, if any current owner submits a written statement that conflicts with the allocation request or expresses written disagreement with the allocation filed according to paragraph (a) of this section, no allocation will be approved for the farm unless all the current owners of the farm provide FSA with written evidence of the dispute resolution during the allocation period.

(c) FSA will provide the farm operator and owners of record with a summary of all covered commodities P&CP acres and subsequently planted crop acreage for the 2008 through 2012 crop years (as reported to FSA on acreage reports filed with FSA in each of those years). Acreage not reported to FSA by producers will not be included in the summary. The summary of records specified in paragraph (c) of this section is intended to assist current owners of farms with the one-time opportunity for generic base acre allocation as provided in this section. Any current owner of a farm may also at any time visit the FSA county office and request to obtain a copy of the summary referenced in paragraph (c) of this section.

(d) Current owners will be provided a one-time opportunity to update the records identified in paragraph (c) of this section during the allocation period, provided that there are crop insurance records (or other verifiable documentation available to support those requested updates). In the event that an update to a farm's P&CP acres of a covered commodity for 2009 through 2012 causes any payment under another FSA or CCC program to become unearned, the overpayment must be refunded to FSA or CCC in accordance with the rules for that program and the FSA or CCC regulations governing overpayment (7 CFR parts 718 and 1403).

(e) After an update as specified in paragraph (d) of this section, the owner may allocate the farm's generic base acres during the allocation period based on a proration of each covered commodity's P&CP acres or subsequently planted crop acreage in crop years 2009 through 2012 to the total P&CP acres or subsequently planted crop acreage of all covered commodities during that time.

(f) Current owners can allocate generic base acres at any time during the allocation period without receiving or requesting the summary records, and, therefore, failure to receive a summary record from FSA is not grounds for appeal or extension of the allocation period.

(g) The option to allocate generic base acres is an ''all or nothing'' decision for the farm. Generic base acres will not be retained, partially or in whole. A decision by any current owner to allocate generic base acres on a farm in accordance with this section is final and binding if made according to this section during the allocation period unless that allocation is withdrawn in writing by that current owner or another current owner. If another current owner subsequently files a different allocation request in whatever time remains in the stated allocation period or if there are conflicting allocation requests of current owners in the allocation period, FSA will not make the allocation unless the conflict is resolved via written agreement between the current owners who filed the conflicting requests. In the event that a resolution is not presented, the provisions of paragraph (h) of this section will take effect. In the case of submitting evidence of resolution, the written agreement must be filed with FSA in the allocation period. Any and all updates and allocation requests mentioned in this section are subject to review and approval or disapproval by FSA for CCC.

(h) In the event that an owner fails to make an allocation according to this part and the farm has met the planting requirement in paragraph (a) of this section, the farm will receive an allocation of seed cotton base acres in accordance with paragraph (a)(1)(i) of this section.

Subpart C—Establishment of Price Loss Coverage Yields and Submitting Production

■ 8. Amend § 1412.31 as follows:

■ a. In paragraph (a), remove the word ''The'' and add the words ''Except for seed cotton'' in its place and remove ''§ 1412.33 or § 1412.34, whichever is applicable'' and add ''§ 1412.34'' in their place.

■ b. Redesignate paragraph (b) as paragraph (c) and add new paragraph (b).

■ c. In newly redesignated paragraph (c), remove the words and punctuation ''or for which a covered commodity is planted on generic base acres,''.

§ 1412.31 PLC yields for covered commodities.

* * * * *

(b) The PLC yield for seed cotton on the farm is equal to the counter-cyclical payment yield established for upland cotton on the farm as in effect September 30, 2013, times 2.4, unless the PLC yield is updated as specified in § 1421.33.

* * * * *

■ 9. Amend § 1412.32 as follows:

■ a. Revise the section heading;

■ b. In paragraph (a), remove the words and punctuation ''(except generic base acres),''; and

■ c. In paragraph (e), remove the reference to ''§ 1412.35'' and add ''§ 1412.36'' in its place.

The revision reads as follows:

§ 1412.32 Updating PLC yield for all covered commodities except seed cotton.

* * * * *

§§ 1412.33 through 1412.35 [Redesignated as §§ 1412.34 through 1412.36]

■ 10. Redesignate §§ 1412.33 through 1412.35 as §§ 1412.34 through 1412.36.

■ 11. Add new § 1412.33 to read as follows:

§ 1412.33 Updating PLC yield for seed cotton.

(a) For a farm that has seed cotton base acres as adjusted, in excess of zero acres, a current owner of the farm has a one-time opportunity in a specified period, as announced by FSA, to update the PLC yield equal to 90 percent of the upland cotton's 2008 through 2012 average yield per planted acre, excluding from the average any year that no acreage was planted to upland cotton, times 2.4. If the yield per planted acre in any of the years 2008 through 2012 is less than 75 percent of the average of the county yield, then 75 percent of the average of the 2008 through 2012 county yields will be substituted for that year.

(b) The current owner of the farm may retain the PLC yield or update the PLC yield.

(c) PLC yields are exclusively used for PLC. However, any owner of a farm can update the seed cotton PLC yield as specified in paragraph (a) of this section, regardless of program election, enrollment, or participation.

(d) A decision by any current owner of a farm to update the seed cotton PLC yield as specified in this section is final and binding unless that decision to update the yield is withdrawn by that current owner or a different yield update is made by that current owner or another current owner. If that current owner or another current owner requests a different PLC yield update for the covered commodity during the yield update period specified in paragraph (a) of this section, that update will become final.

(e) All PLC yield updates are subject to review and approval by FSA as specified in § 1412.36. FSA's decision to issue payments based on the PLC yield updated by an owner is subject to verification and spot check by FSA at any time.

(f) Yield updates in this section will be permitted using the current owner's certification of yield. The certification is subject to spot check or verification by FSA at any time. If selected for spot check or verification, the owner must submit evidence specified in § 1412.35 to support the certified yield.

§ 1412.34 [Amended]

■ 12. In newly redesignated § 1412.34(b)(2)(i) and (c), remove each cross reference to ''§ 1412.34'' and add ''§ 1412.35'' in their place.

Subpart D—ARC and PLC Contract Terms and Enrollment Provisions for Covered Commodities

■ 13. Amend § 1412.41 as follows:

■ a. Revise paragraph (a)(2);

■ b. In paragraph (b), remove the words and punctuation ''June 1 of the applicable contract year,'' and add in their place ''September 30, 2018,'';

■ c. In paragraph (e), remove ''2015 or subsequent'' and add ''2018'' in its place, and remove ''2015 and subsequent crop year''; and

■ d. Add paragraph (f).

The revision and addition read as follows:

§ 1412.41 ARC or PLC program contract.

(a) * * *

(2) For program year 2018, the enrollment period will end on September 30, 2018.

(i) Eligible producers must execute and submit an ARC or PLC program contract not later than September 30, 2018, for fiscal year 2018 contracts.

(ii) Except as stated in this section, enrollment is not allowed after September 30 of the fiscal year in which the ARC or PLC payments are requested. FSA will not process offers of enrollment for a contract period after the contract period has ended. This is not a compliance provision but a rule of general applicability and will apply to every offer to contract in each contract year.

* * * * *

(f) Any 2018 contract for a farm that includes generic base acres, whether or not that contract was approved on behalf of CCC, is invalid and withdrawn. Eligible producers on farms that had generic base acres must enroll in accordance with paragraph (a) of this section after allocation has been completed. Any contract executed before allocation in § 1412.25 will not be recognized by CCC for any purpose.

§§ 1412.44 and 1412.45 [Removed and Reserved]

■ 14. Remove and reserve §§ 1412.44 and 1412.45.

§ 1412.46 [Amended]

■ 15. In § 1412.46 (f), remove the last sentence.

Subpart E—Financial Considerations Including Sharing Payments

§ 1412.51 [Amended]

■ 16. Amend § 1412.51 as follows:
■ a. Remove paragraph (b);
■ b. Redesignate paragraphs (c) through (e) as (b) through (d), and;
■ c. In newly redesignated paragraph (d), remove the words ''including any generic base acres''.

§ 1412.52 [Amended]

■ 17. In § 1412.52(a), remove the words ''each of the 2014 through'' and add the word ''the'' in their place.
■ 18. Amend § 1412.53 as follows:
■ a. In paragraph (a) introductory text, remove ''each of the 2014 through'' and add ''the'' in their place;
■ b. In paragraph (b) introductory text, remove ''each of the 2014 through'' and add ''the'' in their place; and
■ c. Revise paragraph (e).

The revision reads as follows:

§ 1412.53 ARC payment provisions.

* * * * *

(e) FSA has determined the irrigated and non-irrigated counties and crops for the 2018 program year.

* * * * *

§ 1412.54 [Amended]

■ 19. Amend § 1412.54 as follows;
■ a. In paragraph (a), remove the words ''apply for CTAP as specified in subpart H of this part and annually'';
■ b. In paragraph (b), remove the words ''applies for CTAP or elects and'';
■ c. In paragraph (c), remove the words ''CTAP payment or'';
■ d. In paragraph (d)(4), remove the words ''ARC, PLC, or CTAP'' and add the words ''ARC or PLC'' in their place both times they appear;
■ e. In paragraph (f) introductory text, remove the first sentence;
■ f. In paragraph (f)(2), remove the words ''of this part''; and
■ f. In paragraph (h), remove the words ''a CTAP application or'' and add the word ''an'' in their place, and remove the words and punctuation ''CTAP application, or'' in both places.

§ 1412.55 [Amended]

■ 20. In § 1412.55(a)(1), remove the words and punctuations ''ARC, PLC, or CTAP'', and add ''ARC or PLC'' in their place.

Subpart F—Violations and Compliance Provisions

§ 1412.61 [Amended]

■ 21. In § 1412.61, remove ''or CTAP application, as applicable'' and remove ''or CTAP application''.

§ 1412.63 [Amended]

■ 22. In § 1412.63, remove the words ''or CTAP application''.

§ 1412.64 [Amended]

■ 23. Amend § 1412.64 as follows:
■ a. In paragraph (a), remove ''ARC, PLC, and CTAP'' and add ''ARC or PLC'' in its place, and remove the words ''or application'';
■ b. In paragraph (b) introductory text, remove ''ARC, PLC, or CTAP'' and add ''ARC or PLC'' in its place; and
■ c. In paragraph (b)(3), remove the words and punctuation '', CTAP application,''.

§ 1412.66 [Amended]

■ 24. In § 1412.66(a), remove ''ARC, PLC, and CTAP'' and add ''ARC or PLC'' in their place.

§ 1412.69 [Amended]

■ 25. In § 1412.69, remove ''CTAP participants and enrolled'' and add ''Enrolled'' in its place.

Subpart G—ARC and PLC Election

■ 26. Amend § 1412.71 as follows:
■ a. Remove paragraph (c);
■ b. Redesignate paragraph (d) as paragraph (c);
■ c. In newly redesignated paragraph (c), remove the first sentence, remove ''The'' and add ''In general, a'' in its place; and
■ d. Add new paragraph (d).

The addition reads as follows:

§ 1412.71 Election of ARC or PLC.

* * * * *

(d) Beginning with the 2018 crop year, a valid election for seed cotton is required for all current producers on a farm where seed cotton is added as a covered commodity, as specified in § 1412.25, unless the farm contains a valid ARC–IC election. A valid ARC–IC election on a farm is for all covered commodities and will include the added covered commodity of seed cotton. This election is for seed cotton only. All other covered commodities on a farm with seed cotton base acres have an election on file and will be bound by that prior election. The election by all current producers is to obtain:

(1) PLC for seed cotton base acres, or

(2) ARC–CO for seed cotton base acres.

* * * * *

■ 27. In § 1412.74, add paragraph (c) to read as follows:

§ 1412.74 Failure to make election.

* * * * *

(c) If a valid election is not made for seed cotton base acres on a farm, the producers of seed cotton base acres on the farm are deemed to have elected PLC for acres allocated on the farm to seed cotton for the 2018 crop year.

Steven Peterson,
Acting Administrator, Farm Service Agency.
Robert Stephenson,
Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2018–17681 Filed 8–15–18; 8:45 am]
BILLING CODE 3410–05–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

Truth in Lending (Regulation Z)

CFR Correction

■ In Title 12 of the Code of Federal Regulations, Parts 220 to 229, revised as of January 1, 2018, on page 414, in § 226.43, paragraph (1) after paragraph (b)(2) and before paragraph (b)(3) is removed.

[FR Doc. 2018–17793 Filed 8–15–18; 8:45 am]
BILLING CODE 1301–00–D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations

CFR Correction

■ In Title 13 of the Code of Federal Regulations, revised as of January 1, 2018, on page 393, in § 121.201, in the table ''Small Business Size Standards by NAICS Industry'', the entry for NAICS code 336999 under Subsector 336 is completed by adding ''All Other Transportation Equipment Manufacturing'' under NAICS U.S. industry title and ''1,000'' under Size standards in number of employees.

[FR Doc. 2018–17794 Filed 8–15–18; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0937; Product Identifier 2017–NE–32–AD; Amendment 39–19341; AD 2018–16–01]

RIN 2120–AA64

Airworthiness Directives; B/E Aerospace Fischer GmbH Attendant Seats and Pilot Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain B/E Aerospace Fischer GmbH Attendant Seats NG and Pilot Seats 120/335. This AD requires removing and replacing the energy absorber (EA) assemblies on affected pilot seats and the removing and replacing affected attendant seats. This AD was prompted by the discovery that rivets with insufficient strength were used during the manufacture of EA assemblies installed on certain seats. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 31, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 31, 2018.

We must receive comments on this AD by October 1, 2018.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact B/E Aerospace Fischer GmbH, Müller-Armack-Str. 4, D–84034 Landshut, Germany; phone: +49 (0) 871 93248–0; fax: +49 (0) 871 93248–22; email: *spares@fischer-seats.de.* You may view this service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0937.

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–2017–0937; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7693; fax: 781–238–7199; email: *dorie.resnik@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2016–0210, dated October 24, 2016 (referred to after this as ''the MCAI''), to address an unsafe condition for the specified products. The MCAI states:

> It was discovered that rivets with insufficient strength were used during the manufacturing of energy absorber (EA) assemblies, installed on certain seats. As a consequence, these EA assemblies may not be fully functional during an emergency landing.
>
> This condition, if not corrected, could lead to injury of the seat occupant.
>
> To address this unsafe condition, B/E Aerospace Fisher issued Service Bulletin (SB) SB 9911–001 to provide replacement instructions.
>
> For the reason described above, this [EASA] AD requires replacement of the EA assemblies on the affected seats.

You may obtain further information by examining the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0937.

Related Service Information Under 1 CFR Part 51

We reviewed B/E Aerospace Fischer Alert Service Bulletin (ASB) No. SB 9911–001, Issue B, dated November 4, 2016. The ASB describes procedures for removing and replacing the EA assemblies on affected pilot seats and the removing and replacing affected attendant seats. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by EASA, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all the relevant information provided by EASA and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires removing and replacing the EA assemblies on affected pilot seats and removing and replacing the affected attendant seats.

FAA's Justification and Determination of the Effective Date

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

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the ADDRESSES section. Include the docket number FAA–2017–0937 and Product Identifier 2017–NE–32–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule because of 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 final rule.

Costs of Compliance

We estimate that this AD affects 0 pilot seats and 0 attendant seats installed on aircraft of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect to determine if re-work has been accomplished.	1 work-hour × $85 per hour = $85	$0	$85	$0
Replace EA assembly	2 work-hours × $85 per hour = $170	20,000	20,170	0
Remove and replace attendant seat	2 work-hour × $85 per hour = $170	10,000	10,170	0

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.

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

(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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–16–01 B/E Aerospace Fischer GmbH: Amendment 39–19341; Docket No. FAA–2017–0937; Product Identifier 2017–NE–32–AD.

(a) Effective Date

This AD is effective August 31, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to attendant seats NG and pilot seats 120/335 with part numbers (P/Ns) and serial numbers (S/Ns) listed in Figures 1 and 2 to paragraph (c) of this AD. These seats are known to be installed on, but not limited to, Leonardo S.p.a. (formerly Finmeccanica, AgustaWestland, and Agusta) A109 and AW169 rotorcraft.

FIGURE 1 TO PARAGRAPH (c) OF THIS AD—P/N AND S/NS OF ATTENDANT SEAT NG

P/N	S/N
1021–A–B–10221–0WX01	0232 ,0237, 0252, 0253, 0254, 0255, 0263, 0284, 0285, 0286, 0287, 0288, 0290, 0291, 0307, 0308, 0309, 0310, 0311, 0312, 0313, 0314.

FIGURE 2 TO PARAGRAPH (c) OF THIS AD—P/NS AND S/NS OF PILOT SEAT 120/335

P/N	S/N
9911–0–0–X05X11101L2 ..	1524, 1525, 1531, 1534.
9911–0–0–X05X11101R2	1529, 1530.
9911–0–0–X05X111L1R2	1542, 1543.
9911–0–0–X05X111R1L2	1541.

(d) Subject

Joint Aircraft System Component (JASC) Code 2510, Flight Compartment Equipment.

(e) Unsafe Condition

This AD was prompted by the discovery that rivets with insufficient strength were used during the manufacture of energy absorber (EA) assemblies installed on certain Attendant Seats NG and Pilot Seats 120/335. We are issuing this AD to prevent malfunction of the EA on the seat. The unsafe condition, if not addressed, could result in injuries to the occupants during an emergency landing.

(f) Compliance

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

(g) Required Actions

Within 45 days after the effective date of this AD:

(1) Review each affected attendant seat NG and pilot seat 120/335 to determine if rework has already been performed in accordance with the instructions in the Actions paragraph in B/E Aerospace Fischer Alert Service Bulletin (ASB) No. SB 9911–001, Issue B, dated November 4, 2016. If rework has been performed, no further action is required.

(2) Remove and replace the EA assemblies on each affected pilot seat in accordance with the instructions in the Actions paragraph in B/E Aerospace Fischer ASB No. SB 9911–001, Issue B, dated November 4, 2016.

(3) Remove each affected attendant seat and replace with a reworked seat in accordance with the instructions in the Actions paragraph B/E Aerospace Fischer ASB No. SB 9911–001, Issue B, dated November 4, 2016.

(h) Installation Prohibition

After the effective date of this AD, do not install an affected seat on an aircraft unless, prior to installation, the EA assemblies on the seat have been replaced in accordance with B/E Aerospace Fischer ASB No. SB 9911–001, Issue B, dated November 4, 2016.

(i) Credit for Previous Actions

You may take credit for the actions required by paragraph (g) of this AD if you performed these actions using B/E Aerospace Fischer ASB No. SB 9911–001, Issue A, dated July 14, 2016.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

(1) For more information about this AD, contact Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7693; fax: 781- 238–7199; email: *dorie.resnik@faa.gov.*

(2) Refer to European Aviation Safety Agency (EASA) AD 2016–0210, dated October 24, 2016, for more information. You may examine the EASA AD in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2017–0937.

(l) Material Incorporated by Reference

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

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

(i) B/E Aerospace Fischer Alert Service Bulletin No. SB 9911–001, Issue B, dated November 4, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact B/E Aerospace Fischer GmbH, Müller-Armack-Str. 4, D–84034 Landshut, Germany; phone: *+49 (0) 871 93248–0;* fax:+49 (0) 871 93248–22; email: *spares@fischer-seats.de.*

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on August 9, 2018.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–17648 Filed 8–15–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0632; Airspace Docket No. 17–AWA–4]

RIN 2120–AA66

Amendment of Chicago Class B and Chicago Class C Airspace; Chicago, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends the Chicago, IL, Class B airspace area description by changing references for defining the center point of the Chicago Class B airspace from the Chicago O'Hare VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) to ''Point of Origin.'' The ''Point of Origin'' uses the same geographic coordinates as the Chicago O'Hare VOR/DME location. This action also amends the Chicago Midway Airport, IL, Class C airspace description by changing the reference for defining a portion of the Class C airspace boundary from using the Chicago O'Hare VOR/DME to using the geographic coordinates of the Chicago O'Hare VOR/DME instead. The FAA is taking this action due to the planned decommissioning of the Chicago O'Hare VOR/DME. Additionally, the Chicago Class B and Chicago Midway Airport Class C airspace descriptions are edited further to reflect the Chicago Midway International Airport name change to match the current information in the FAA's aeronautical database, and the Chicago Midway Airport Class C airspace designation is amended to remove the airport name from the airspace designation to comply with FAA regulatory guidance. These changes are editorial only and do not alter the current charted boundaries, altitudes, or ATC procedures for the Chicago Class B or the Chicago Midway International Airport Class C airspace areas.

DATES: *Effective date:* 0901 UTC, October 11, 2018. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it makes editorial corrections to existing Class B and Class C airspace descriptions to maintain accuracy.

History

The FAA is planning to decommission the Chicago O'Hare, IL, VOR/DME in January 2019 in support of construction activities for creating a new runway at Chicago O'Hare International Airport. To ensure there will be no change to the existing charted boundaries of the Chicago Class B or Chicago Midway Airport Class C airspace areas, the FAA is retaining the geographic coordinates of the Chicago O'Hare VOR/DME location as the center point for the Class B airspace and also using them to define a portion of the boundary of the Chicago Midway Airport Class C airspace.

Class B airspace designations are published in paragraph 3000 and Class C airspace designations are published in paragraph 4000 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class B and Class C airspace designations listed in this document will be subsequently published in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by editing the description of the Chicago, IL, Class B airspace and Chicago Midway Airport, IL, Class C airspace areas to remove references to the ''Chicago O'Hare VOR/DME'' and update the Chicago Midway International Airport name.

In the Chicago Class B airspace description, the Chicago VOR/DME is replaced with ''Point of Origin'' for defining the center point of the Class B airspace area.

In the Chicago Midway International Airport Class C airspace description, the arc around the Chicago VOR/DME is replaced by a radius around a point at the geographic coordinates of the Chicago VOR/DME for defining a portion of the Class C airspace boundary.

The FAA is taking these actions so the currently charted boundaries of the Class B and Class C airspace areas are not affected by the planned decommissioning of the Chicago O'Hare VOR/DME.

The Chicago Class B and Chicago Class C airspace descriptions are also updated by changing the airport name Chicago Midway Airport to Chicago Midway International Airport, to be in concert with the data currently contained in the FAA's aeronautical database.

Additionally, this action removes the airport name from the Chicago, IL, Class C airspace designation to comply with the FAA's regulatory guidance.

Because this action is a minor editorial change that does not alter the currently charted boundaries, altitudes, or ATC procedures for the Chicago, IL, Class B and the Chicago Midway International Airport, IL, Class C airspace, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary and contrary to the public interest.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending the airspace descriptions of the Chicago, IL, Class B and Chicago Midway International Airport, IL, Class C airspace areas, by changing the references to the Chicago O'Hare VOR/DME to ''Point of Origin'' in the Chicago Class B description and to using the Chicago O'Hare VOR/DME geographic coordinates in the Chicago Midway Airport Class C description, due to the planned decommissioning of the Chicago, IL, VOR/DME, qualifies for categorical exclusion under the National Environmental Policy Act, 42 U.S.C. 4321; its implementing regulations at 40 CFR part 1500; and its agency-specific implementing regulations in FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' regarding categorical exclusions for procedural actions at paragraph 5–6.5a, which categorically excludes from full environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points. This airspace action is an editorial change only and is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting Points, signed August 3, 2017, and effective September 15, 2017, is amended as follows:

Paragraph 3000 Subpart B—Class B Airspace.

* * * * *

AGL IL B Chicago, IL

Chicago O'Hare International Airport (Primary Airport)
(Lat. 41°58′38″ N, long. 87°54′29″ W)
Chicago Midway International Airport
(Lat. 41°47′10″ N, long. 87°45′09″ W)
Point of Origin
(Lat. 41°59′16″ N, long. 87°54′17″ W)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 42°04′11″ N, long. 87°55′31″ W; thence clockwise along the 5 NM radius of the Point of Origin to lat. 41°59′15″ N, long. 87°47′35″ W; thence east to lat. 41°59′15″ N, long. 87°46′15″ W; thence clockwise along the 6 NM radius of the Point of Origin to Interstate Highway 355 (I–355) (41°57′16″ N, 88°01′52″ W); thence north along I–355 to Interstate Highway 290 (I–290) (lat. 41°57′12″ N, long. 88°01′56″ W); thence north along I–290 to the 6 NM radius of the Point of Origin (lat. 42°01′17″ N, long. 88°01′52″ W); thence clockwise along the 6 NM radius of the Point of Origin to U.S. Highway 12 (lat. 42°05′03″ N, long. 87°56′26″ W); thence southeast along U.S. Highway 12 to the point of beginning.

Area B. That airspace extending upward from 1,900 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the intersection of the 5 NM radius of the Point of Origin and the railroad tracks at lat. 42°03′57″ N, long. 87°51′55″ W; thence northeast along the railroad tracks to Willow Road (lat. 42°06′20″ N, long. 87°49′38″ W); thence east along Willow Road to the 10 NM radius of the Point of Origin (lat. 42°06′04″ N, long. 87°44′26″ W); thence clockwise along the 10 NM radius of the Point of Origin to the 5 NM radius of Chicago Midway International Airport (lat. 41°49′34″ N, long. 87°51′00″ W); thence counterclockwise along the 5 NM radius of the Chicago Midway International Airport to the 10.5 NM radius of the Point of Origin (lat. 41°48′59″ N, long. 87°51′22″ W); thence clockwise along the 10.5 NM radius of the Point of Origin to the 10 NM radius of the Chicago Midway International Airport (lat. 41°49′11″ N, long. 87°58′14″ W); thence clockwise along the 10 NM radius of Chicago Midway International Airport to the 10 NM radius of the Point of Origin (lat. 41°49′40″ N, long. 87°58′05″ W); thence clockwise along the 10 NM radius of the Point of Origin to U.S. Highway 12 (lat. 42°08′01″ N, long. 88°00′46″ W); thence southeast along U.S. Highway 12 to the 5 NM radius of the Point of Origin (lat. 42°04′10″ N, long. 87°55′31″ W); thence clockwise along the 5 NM radius of the Point of Origin to the point of beginning, excluding that airspace designated as Area A.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL within an area bounded by the 15 NM radius of the Point of Origin, excluding that airspace designated as Area A, Area B, Area G, and Area H.

Area D. That airspace extending upward from 3,600 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 42°07′52″ N, long. 88°10′47″ W; thence northwest to the 25 NM radius of the Point of Origin (lat. 42°15′40″ N, long. 88°19′39″ W); thence clockwise along the 25 NM radius of the Point of Origin to lat. 41°42′03″ N, long. 88°18′34″ W; thence northeast to the 15 NM radius of the Point of Origin (lat. 41°49′53″ N, long. 88°09′59″ W); thence clockwise along the 15 NM radius of the Point of Origin to the point of beginning, excluding that airspace designated as Area A, Area B, Area C, Area G, and Area H.

Area E. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 42°11′11″ N, long. 87°24′46″ W; thence east to the 30 NM radius of the Point of Origin (lat. 42°10′39″ N, long. 87°17′01″ W); thence clockwise along the 30 NM radius of the Point of Origin to lat. 41°46′38″ N, long. 87°17′51″ W; thence west to the 25 NM radius of the Point of Origin (lat. 41°46′40″ N, long. 87°25′22″ W); thence counterclockwise along the 25 NM radius of the Point of Origin to the point of beginning.

Area F. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 42°07′52″ N, long. 88°10′47″ W; thence northwest to the 25 NM radius of the Point of Origin (lat. 42°15′40″ N, long. 88°19′39″ W); thence counterclockwise along the 25 NM radius of the Point of Origin to Interstate 90 (lat. 42°07′22″ N, long. 88°26′01″ W); thence west to the 30 NM radius of the Point of Origin (lat. 42°07′21″ N, long. 88°33′05″ W); thence counterclockwise along the 30 NM radius of the Point of Origin to County Road 10 (lat. 41°49′49″ N, long. 88°32′27″ W); thence east along County Road 10 to the 25 NM radius of the Point of Origin (lat. 41°50′40″ N, long. 88°25′44″ W); thence counterclockwise along the 25 NM radius of the Point of Origin to lat. 41°42′03″ N, long. 88°18′34″ W; thence northeast to the 15 NM radius of the Point of Origin (lat. 41°49′53″ N, long. 88°09′59″ W); thence clockwise along the 15 NM radius of the Point of Origin to the point of beginning.

Area G. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 42°04′15″ N, long. 87°54′56″ W; thence northwest to the 10 NM radius of the Point of Origin (lat. 42°09′00″ N, long. 87°57′22″ W); thence counterclockwise along the 10 NM radius of the Point of Origin to U.S. Highway 12 (lat. 42°08′01″ N, long. 88°00′46″ W); thence southeast along U.S. Highway 12 to the 5 NM radius of the Point of Origin (lat. 42°04′11″ N, long. 87°55′31″ W); thence clockwise along the 5 NM radius of the Point of Origin to the point of beginning.

Area H. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the intersection of Willow Road and railroad tracks at lat. 42°06′20″ N, long. 87°49′38″ W; thence northeast along the railroad tracks to the 10 NM radius of the Point of Origin (lat. 42°08′06″ N, long. 87°48′00″ W); thence clockwise along the 10 NM radius of the Point of Origin to Willow Road (lat. 42°06′04″ N, long. 87°44′26″ W); thence west along Willow Road to the point of beginning.

* * * * *

Paragraph 4000 Subpart C—Class C Airspace.

* * * * *

AGL IL C Chicago, IL

Chicago Midway International Airport, IL
(Lat. 41°47′10″ N, long. 87°45′09″ W)

That airspace extending upward from the surface to 3,600 feet MSL within a 5-mile radius of the Chicago Midway International Airport; and that airspace extending upward from 1,900 feet MSL to 3,600 feet MSL within a 10-mile radius of the airport beginning from a line 2-miles northeast of and parallel to the Chicago Midway International Airport Runway 31C localizer course, thence clockwise along the 10-mile radius of the airport to the intersection with the 10.5-mile radius around a point centered at lat. 41°59′16″ N, long. 87°54′17″ W, thence counterclockwise along that 10.5-mile radius to the intersection with the Chicago Midway International Airport 5-mile radius. This Class C airspace area excludes the airspace within the Chicago, IL, Class B airspace area.

Issued in Washington, DC, on August 9, 2018.

Rodger A. Dean, Jr.,

Manager, Airspace Policy Group.

[FR Doc. 2018–17596 Filed 8–15–18; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 23

Guides for the Jewelry, Precious Metals, and Pewter Industries

AGENCY: Federal Trade Commission.

ACTION: Final rule; adoption of revised guides.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') adopts revised Guides for the Jewelry, Precious Metals, and Pewter Industries (''Jewelry Guides'' or ''Guides''). This document summarizes the Commission's revisions to the previous Guides and includes the final Guides as revised. Readers can find the Commission's complete analysis in the Statement of Basis and Purpose (''SBP'') on the FTC's website at *https://www.ftc.gov/public-statements/2018/07/statement-basis-purpose-final-revisions-jewelry-guides.*

DATES: Effective on August 16, 2018.

FOR FURTHER INFORMATION CONTACT: Reenah L. Kim, Attorney, (202) 326–2272, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: As part of its comprehensive review of the Jewelry Guides, the Commission reviewed public comments and the transcript of a public roundtable. The Commission developed its final guidance in accordance with Section 5 of the Federal Trade Commission Act (''FTC Act''), which prohibits deceptive or unfair acts or practices.[1] The Guides focus on advising marketers how to make non-deceptive claims about jewelry products, rather than preventing unfair practices.[2] Under Section 5, an act or practice is deceptive if it involves a material statement or omission that would mislead a consumer acting reasonably under the circumstances.[3]

As administrative interpretations of Section 5, the Commission's Jewelry Guides are not intended to be stricter than Section 5. Rather, they provide the Commission's interpretation of Section 5 as applied to jewelry marketing, to help marketers avoid deceptive practices. To comply with Section 5, marketers must consider how reasonable consumers will view their claims as a whole, assessing the net impression conveyed by all elements (including the text, product names, and depictions).[4]

When the Commission issues or revises an industry guide, it is providing an administrative interpretation of laws it administers, including Section 5's prohibition on unfair and deceptive acts or practices in or affecting commerce. The Commission provides its administrative interpretation based on information submitted and any other information available, including consumer perception evidence whenever possible, analyzing the information through the reasonable person standard first set forth in the Deception Policy Statement in 1983, and the unfairness standard, first set forth in the Unfairness Policy Statement announced in 1984 and codified in Section 5(n) of the FTC Act. Applying the reasonable consumer standard supported by consumer perception evidence as the Commission revises the Jewelry Guides (which originally predated the two policy statements) enhances the protection of consumers from the harm of false or misleading claims in jewelry marketing and fosters truthful, non-misleading claims in jewelry marketing that are beneficial to consumers and competition. Based on this framework, the Commission now makes several modifications and additions to the previous Guides and adopts the resulting revised Guides as final. Specifically, the Commission revises the following areas: (I) Surface application of precious metals; (II) alloys with precious metals in amounts below minimum thresholds; (III) products containing more than one precious metal; (IV) composite gemstone products; (V) varietals; (VI) ''cultured'' diamonds; (VII) qualifying claims about man-made gemstones; (VIII) pearl treatment disclosures; (IX) use of the term ''gem''; (X) misleading illustrations; (XI) diamond definition; and (XII) exemptions recognized in the assay for gold, silver, and platinum. Finally, the Commission does not expand the existing Guides to address certain products and claims as requested by commenters.

Surface Application of Precious Metals

The final Guides include several revisions addressing precious metal surface applications. First, based on the comments, the Guides now caution marketers against using silver or platinum terms to describe all or part of a coated product unless they adequately qualify the term to indicate the product has only a surface layer of the advertised precious metal.[5] The Guides retain similar guidance advising marketers not to use gold terms to describe coated products or parts unless the term is qualified to convey that the gold is only on the surface.[6]

Second, for sellers choosing to advertise their products' precious metal coatings, the final Guides advise how to do so non-deceptively. Specifically, they advise marketers advertising their product's gold, silver, or platinum coating to assure its reasonable durability. In this context, ''reasonable durability'' means ''all areas of the plating are sufficiently thick to assure coverage that reasonable consumers would expect from the surface application.''[7]

Third, based on new durability testing, the final Guides include revised examples of non-deceptive markings and descriptions for gold surface applications that are reasonably durable.[8] For electrolytic applications, the Guides retain the same thickness and karat fineness amounts as the previous Guides, but no longer advise marketers they may non-deceptively use ''gold flashed'' and ''gold washed'' for products with an electroplating that does not have a minimum thickness throughout equivalent to 0.175 microns (approximately 7/1,000,000ths of an inch) of fine gold. For mechanical applications, the Guides now advise a 1/40th minimum weight ratio for non-deceptive use of the terms ''gold plate(d),''[9] ''gold overlay,'' ''rolled gold plate.''[10] In addition, the Guides retain existing guidance advising a 1/20th weight ratio for ''gold filled'' products, and the guidance advising marketers to

[1] 15 U.S.C. 45.

[2] Although the Guides focus on deception, the FTC can also address unfair practices should the need arise.

[3] FTC Policy Statement on Deception, appended to *Cliffdale Assoc., Inc.,* 103 FTC 110 (1984); *see also FTC* v. *Verity Int'l,* 443 F.3d 48, 63 (2d Cir. 2006); *FTC* v. *Pantron I Corp.,* 33 F.3d 1088, 1095 (9th Cir. 1994). Under Section 5, an act or practice is unfair if it causes or is likely to cause substantial injury that consumers could not reasonably avoid, and the injury is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. 45(n).

[4] *See generally* Deception Policy Statement, appended to *Cliffdale Assoc., Inc.,* 103 FTC at 179 (1984).

[5] Sections 23.5(b)(4) (silver) and 23.6(b)(1) (platinum).

[6] Section 23.3(b)(3).

[7] Sections 23.3(b)(4), (5), (6), and (8), (c)(2) and (3) (gold); 23.5(b)(5) (silver); and 23.6(b)(2) (platinum).

[8] These examples are also referred to as ''safe harbor'' guidance.

[9] As proposed, the final Guides eliminate the safe harbor provision for ''gold plate(d)'' coatings applied by any method and transfer this term to guidance that separately addresses electrolytic and mechanical applications.

[10] Section 23.3(c)(2). As explained in the SBP, the Guides advise a minimum weight ratio, rather than the previously proposed coating thickness, based on new evidence indicating that 1/40th provides the durability consumers expect.

disclose weight ratio when using ''gold overlay'' or ''rolled gold plate'' for products below 1/20th.[11]

Fourth, the final Guides advise marketers to disclose the purity of coatings made with a gold, silver, or platinum alloy. The Guides already caution marketers against unqualified use of ''gold,'' ''silver,'' or ''platinum'' to describe alloys containing less than 24K gold, 925 PPT silver, or 950 PPT platinum. To clarify that this guidance applies equally to products coated with a gold, silver, or platinum alloy, the Commission amends the guidance to advise that marketers qualify their use of gold, silver, or platinum terms to describe ''all or part'' of a product, ''*including the surface layer of a coated product,*'' with equally conspicuous, accurate purity disclosures.[12]

Finally, the final Guides advise marketers to disclose rhodium coatings over products advertised as precious metal, such as rhodium-plated items marketed as ''white gold'' or silver.[13]

Below-Threshold Precious Metal Alloys

The previous Guides cautioned marketers against using the words ''gold,'' ''silver,'' ''platinum,'' or their abbreviations to describe or mark a product unless it contained the precious metal in an amount that met or exceeded specified thresholds. The final Guides remove the thresholds for gold and silver alloys because new evidence indicates they are no longer necessary to prevent deception. Specifically, the final Guides now advise marketers they may use gold terms to describe a product or part thereof composed throughout of gold alloy—whether above or below 10 karats—if they qualify the term with an equally conspicuous, accurate karat fineness disclosure.[14] The final Guides also advise marketers they may use ''silver'' to describe a product or part thereof composed throughout of an alloy containing less than 925 parts per thousand (PPT), as long as an equally conspicuous, accurate PPT designation immediately precedes the silver term.[15] These changes will give marketers greater flexibility in providing accurate information about their products' content.

However, the final Guides retain the guidance advising a 925 PPT threshold for ''solid silver,'' ''Sterling Silver,'' ''Sterling,'' and the ''Ster.'' Abbreviation,[16] and reserving ''coin'' and ''coin silver'' for products that are 900 PPT,[17] based on their longstanding use and therefore probable consumer understanding. Rather than merely signaling the presence of silver, these terms likely denote specific purity levels (*e.g.,* that ''coin silver'' contains less silver than ''sterling silver''). In addition, the Guides retain the existing platinum alloy guidance without change because the record indicates that, unlike gold and silver, which have traditionally been mixed with base metals to create jewelry, consumers expect platinum products to be substantially composed of pure platinum.

Products Containing More Than One Precious Metal

Based on consumer perception evidence, the final Guides contain a new section (Section 23.8), which states it is unfair or deceptive to misrepresent the relative quantity of each precious metal in a product that contains more than one precious metal, and provides examples of markings and descriptions of terms that may be misleading (*e.g.,* use of the term ''Platinum + Silver'' to describe a product that contains more silver than platinum by weight). This guidance generally advises marketers to list precious metals in the order of their relative weight in the product from greatest to least. Marketers, however, may list metals in a different order if the context makes clear that the metal listed first is not predominant (*e.g.,* ''14k gold-accented silver''), and the Guides provide illustrative examples of such contexts.

Composite Gemstone Products

Based on the record, the final Guides contain new guidance in Section 23.25 to address increased prevalence of deceptive claims resulting from the marketing of composite gemstone products made with gemstone material and any amount of filler or binder, such as lead glass. Specifically, this guidance cautions marketers not to use an unqualified gemstone name to describe these products, and advises against calling them ''treated [gemstone name].'' It also cautions against using the unqualified terms ''composite [gemstone name],'' ''hybrid [gemstone name],'' or ''manufactured [gemstone name]'' unless the term is qualified to disclose clearly and conspicuously that the product: (a) Does not have the same characteristics as the named stone; and (b) requires special care. The final Guides further recommend that the seller disclose the special care requirements to the purchaser.[18]

Varietals

Based on consumer perception evidence, Section 23.26 contains new guidance stating it is unfair or deceptive to mark or describe a product with an incorrect varietal name. Varietal names describe a division of gem species or genus based on color, type of optical phenomenon, or other distinguishing characteristic of appearance (*e.g.,* crystal structure). To help sellers avoid making deceptive claims, this section also provides two examples of markings or descriptions that may be misleading: (a) Use of the term ''yellow emerald'' to describe a golden beryl or heliodor, and (b) use of the term ''green amethyst'' to describe prasiolite.

''Cultured'' Diamonds

The final Guides include new guidance addressing use of the word ''cultured'' to describe laboratory-created diamonds. Based on consumer perception evidence showing marketers can effectively qualify the term, Section 23.12(c)(3) advises them to qualify their use of ''cultured'' by disclosing clearly and conspicuously that the product is not a mined stone. Additionally, the record indicates that marketers can effectively qualify the term ''cultured diamond'' in some circumstances even when the Guides' suggested disclosures (''laboratory-created,'' ''laboratory-grown,'' ''[manufacturer-name]-created'') do not appear in immediate conjunction to the term. For example, some lab-created diamond sellers may choose to emphasize their products' man-made nature in advertisements targeting consumers seeking diamonds that are not traditionally mined. Therefore, to provide greater flexibility, the final Guides advise that marketers may qualify their ''cultured diamond'' claim with words or phrases similar to those detailed in the Guides. Moreover, these marketers do not need to make these qualifying disclosures immediately adjacent to the word ''cultured,'' provided they disclose

[11] Section 23.3(c)(2). As proposed, the final Guides eliminate a note concerning outdated terms (*e.g.,* ''Duragold,'' ''Diragold'') which commenters agreed are no longer used. However, they do not set standards for new coating terms (*e.g.,* ''clad,'' ''bonded'') or other precious metal coatings such as silver or platinum.

[12] Sections 23.3(b)(1) and (2) (gold); 23.5(b)(1) (silver); and 23.6(b)(3) (platinum). In addition, based on the comments, the Guides now include karat fineness disclosures in the description and marking examples for gold electrolytic applications, consistent with the examples for mechanical applications. Section 23.3(b)(5), (6), and (8); 23.3(c)(2) and (3).

[13] Rhodium is a platinum group metal often used to enhance the white color of silver and white gold jewelry. Section 23.7.

[14] Section 23.3(b)(2).

[15] Section 23.5(b)(1).

[16] Section 23.5(b)(2).

[17] Section 23.5(b)(3).

[18] Section 23.25(d).

clearly and conspicuously that the product is not a mined stone.

Qualifying Claims About Man-Made Gemstones

To provide marketers greater flexibility, the final Guides also include revisions to the guidance regarding the use of gemstone names generally (Section 23.25(b)). This amended guidance now advises marketers of man-made gemstones sharing the same optical, physical, and chemical properties as the named stone that they may use words or phrases other than the ones listed in the previous Guides (''laboratory-grown,'' ''laboratory-created,'' ''[manufacturer name]-created,'' ''synthetic'') if they clearly and conspicuously convey that the product is not a mined stone.

Treatments to Pearl Products

Based on the comments, the final Guides include a new section (Section 23.23) advising that marketers disclose clearly and conspicuously treatments to pearls and cultured pearls that: (a) Are not permanent, (b) create special care requirements, or (c) significantly affect value.[19]

Use of the Term ''Gem''

The final Guides eliminate two provisions that discussed use of the word ''gem'' because they are not necessary to prevent deception. Specifically, the final Guides do not include the former Section 23.25 (Misuse of the word ''gem'') and Section 23.20(j) (misuse of the word ''gem'' as to pearls). Instead, they include the term ''gem'' in Section 23.25 (Misuse of the words ''ruby,'' ''sapphire,'' ''emerald,'' ''topaz, ''stone,'' ''birthstone,'' ''gemstone,'' etc.).

Misleading Illustrations

To streamline the guidance, the final Guides also eliminate a section that discussed misleading illustrations (former Section 23.2) because it provided guidance already addressed in other areas: Section 23.1 (Deception (general)) and Section 23.0 (Scope and application). To preserve its specific guidance regarding diamond illustrations and gemstone size, however, the former Note to Section 23.2 has been transferred to Section 23.1.

Diamond Definition

Based on changes in the market, the final Guides eliminate the word ''natural'' from the definition of diamond in Section 23.12(a) because lab-created products that have essentially the same optical, physical, and chemical properties as mined diamonds are also diamonds.[20]

Exemptions in the Assay for Gold, Silver, and Platinum

Based on the comments, the final Guides add bracelet and necklace snap tongues to the exempted items listed in the Appendix for gold alloy products and for products made of silver in combination with gold. These items are already included in the exemptions for mechanically-coated gold products, silver products, and platinum products. Thus, with this revision, bracelet and necklace snap tongues appear in each section addressing assay exemptions.[21]

Products and Claims Not Addressed

The final Guides do not make some revisions that commenters sought. Specifically, the final Guides do not expand the existing guidance to address products made with palladium, use of the term ''natural'' to describe treated gemstones, or the use of geographic and regional identifiers because the evidence does not demonstrate that amendments are necessary to prevent deception. For the same reason, the Commission declines to make revisions addressing diamond-related issues such as use of the terms ''blue white,'' ''ethical'' and ''conflict free,'' as well as grading and appraisals. Furthermore, the final Guides do not expand the guidance regarding ''handmade'' and similar terms specifically to include or exclude hand-cast items because the Commission lacks sufficient evidence on which to base new guidance.[22] For the same reason, the Guides do not address whether marketers may non-deceptively describe ''large-scale'' and ''mass'' or ''industrially'' produced jewelry as ''handmade.''[23]

Conclusion

For further analysis of comments and the final guidance, please see the SBP on the FTC's website, available at *https://www.ftc.gov/public-statements/2018/07/statement-basis-purpose-final-revisions-jewelry-guides.*

List of Subjects in 16 CFR Part 23

Advertising, Jewelry, Labeling, Pewter, Precious metals, and Trade practices.

■ For the reasons set forth in the preamble, the Federal Trade Commission revises 16 CFR part 23 to read as follows:

PART 23—GUIDES FOR THE JEWELRY, PRECIOUS METALS, AND PEWTER INDUSTRIES

Sec.

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[19] This new section tracks the existing guidance regarding gemstone treatments.

[20] The distinctions between these lab-created diamonds and mined stones are addressed elsewhere in the Guides. *See* Sections 23.12(c)(3) and 23.25.

[21] Furthermore, the Commission removes an outdated provision in paragraph (e) of the Appendix regarding platinum. The provision listed additional exemptions for items marked in accordance with guidance that once addressed products containing less than 500 PPT platinum. Because the Commission eliminated this guidance in a prior proceeding, the corresponding list of assay exemptions is no longer necessary. *See* 62 FR 16669, 16674 (Apr. 8, 1997). The final Appendix therefore retains the exemptions for platinum products, but does not include additional exemptions for products with less than 500 PPT.

[22] The Commission does, however, add precious metal clays, ingots, and casting grain to the ''raw materials'' listed in the Note to this section (Section 23.2).

[23] Additionally, the Commission declines to make changes regarding the use of parts per thousand, instead of karats, for gold content disclosures.

Authority: 15 U.S.C. 45, 46.

§ 23.0 Scope and application.

(a) The guides in this part apply to jewelry industry products, which include, but are not limited to, the following: Gemstones and their laboratory-created and imitation substitutes; natural and cultured pearls and their imitations; and metallic watch bands not permanently attached to watches. These guides also apply to articles, including optical frames, pens and pencils, flatware, and hollowware, fabricated from precious metals (gold, silver, and platinum group metals), precious metal alloys, and their imitations. These guides also apply to all articles made from pewter. For the purposes of these guides, all articles covered by these guides are defined as ''industry products.''

(b) These guides apply to persons, partnerships, or corporations, at every level of the trade (including but not limited to manufacturers, suppliers, and retailers) engaged in the business of offering for sale, selling, or distributing industry products.

Note to Paragraph (b): To prevent consumer deception, persons, partnerships, or corporations in the business of appraising, identifying, or grading industry products should utilize the terminology and standards set forth in the guides.

(c) These guides apply to claims and representations about industry products included in labeling, advertising, promotional materials, and all other forms of marketing, whether asserted directly or by implication, through words, symbols, emblems, logos, illustrations, depictions, product brand names, or through any other means.

(d) These guides set forth the Federal Trade Commission's current thinking about claims for jewelry and articles made from precious metals and pewter. The guides help marketers and other industry members avoid making claims that are unfair or deceptive under Section 5 of the FTC Act, 15 U.S.C. 45. They do not confer any rights on any person and do not operate to bind the FTC or the public. The Commission, however, may take action under the FTC Act if a marketer or other industry member makes a claim inconsistent with the guides. In any such enforcement action, the Commission must prove that the challenged act or practice is unfair or deceptive in violation of Section 5 of the FTC Act.

(e) The guides consist of general principles, specific guidance on the use of particular claims for industry products, and examples. Claims may raise issues that are addressed by more than one example and in more than one section of the guides. The examples provide the Commission's views on how reasonable consumers likely interpret certain claims. Industry members may use an alternative approach if the approach satisfies the requirements of Section 5 of the FTC Act. Whether a particular claim is deceptive will depend on the net impression of the advertisement, label, or other promotional material at issue. In addition, although many examples present specific claims and options for qualifying claims, the examples do not illustrate all permissible claims or qualifications under Section 5 of the FTC Act.

§ 23.1 Deception (general).

It is unfair or deceptive to misrepresent the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, treatment, substance, durability, serviceability, origin, price, value, preparation, production, manufacture, distribution, or any other material aspect of an industry product.

Note 1 to § 23.1: If, in the sale or offering for sale of an industry product, any representation is made as to the grade assigned the product, the identity of the grading system used should be disclosed.

Note 2 to § 23.1: To prevent deception, any qualifications or disclosures, such as those described in the guides, should be sufficiently clear and prominent. Clarity of language, relative type size and proximity to the claim being qualified, and an absence of contrary claims that could undercut effectiveness, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.

Note 3 to § 23.1: An illustration or depiction of a diamond or other gemstone that portrays it in greater than its actual size may mislead consumers, unless a disclosure is made about the item's true size.

§ 23.2 Misuse of the terms ''handmade,'' ''hand-polished,'' etc.

(a) It is unfair or deceptive to represent, directly or by implication, that any industry product is handmade or hand-wrought unless the entire shaping and forming of such product from raw materials and its finishing and decoration were accomplished by hand labor and manually-controlled methods which permit the maker to control and vary the construction, shape, design, and finish of each part of each individual product.

Note to Paragraph (a): As used herein, ''raw materials'' include bulk sheet, strip, wire, precious metal clays, ingots, casting grain, and similar items that have not been cut, shaped, or formed into jewelry parts, semi-finished parts, or blanks.

(b) It is unfair or deceptive to represent, directly or by implication, that any industry product is hand-forged, hand-engraved, hand-finished, or hand-polished, or has been otherwise hand-processed, unless the operation described was accomplished by hand labor and manually-controlled methods which permit the maker to control and vary the type, amount, and effect of such operation on each part of each individual product.

§ 23.3 Misrepresentation as to gold content.

(a) It is unfair or deceptive to misrepresent the presence of gold or gold alloy in an industry product, or the quantity or karat fineness of gold or gold alloy contained in the product, or the karat fineness, thickness, weight ratio, or manner of application of any gold or gold alloy plating, covering, or coating on any surface of an industry product or part thereof.

(b) The following are examples of markings or descriptions that may be misleading: [24]

(1) Use of the word ''Gold'' or any abbreviation, without qualification, to describe all or part of an industry product, including the surface layer of a coated product, which is not composed throughout of fine (24 karat) gold.

(2) Use of the word ''Gold'' or any abbreviation to describe all or part of an industry product (including the surface layer of a coated product) composed throughout of an alloy of gold (*i.e.,* gold that is less than 24 karats), unless a correct designation of the karat fineness of the alloy immediately precedes the word ''Gold'' or its abbreviation, and such fineness designation is of at least equal conspicuousness.

(3) Use of the word ''Gold'' or any abbreviation to describe all or part of an industry product that is not composed throughout of gold or a gold alloy, but is surface-plated or coated with gold alloy, unless the word ''Gold'' or its abbreviation is adequately qualified to

[24] See paragraph (c) of this section for examples of acceptable markings and descriptions.

indicate that the product or part is only surface-plated.

(4) Marking, describing, or otherwise representing all or part of an industry product as being plated or coated with gold or gold alloy unless all significant surfaces of the product or part contain a plating or coating of gold or gold alloy that is of reasonable durability.[25]

(5) Use of the term ''Gold Plate,'' ''Gold Plated,'' or any abbreviation to describe all or part of an industry product unless such product or part contains a surface-plating of gold alloy, applied by any process, which is of such thickness and extent of surface coverage that reasonable durability [26] is assured, and unless the term is immediately preceded by a correct designation of the karat fineness of the alloy that is of at least equal conspicuousness as the term used.

(6) Use of the terms ''Gold Filled,'' ''Rolled Gold Plate,'' ''Rolled Gold Plated,'' ''Gold Overlay,'' or any abbreviation to describe all or part of an industry product unless such product or part contains a surface-plating of gold alloy applied by a mechanical process and of such thickness and extent of surface coverage that reasonable durability [27] is assured, and unless the term is immediately preceded by a correct designation of the karat fineness of the alloy that is of at least equal conspicuousness as the term used.

(7) Use of the terms ''Gold Plate,'' ''Gold Plated,'' ''Gold Filled,'' ''Rolled Gold Plate,'' ''Rolled Gold Plated,'' ''Gold Overlay,'' or any abbreviation to describe a product in which the layer of gold plating has been covered with a base metal (such as nickel), which is covered with a thin wash of gold, unless there is a disclosure that the primary gold coating is covered with a base metal, which is gold washed.

(8) Use of the term ''Gold Electroplate,'' ''Gold Electroplated,'' or any abbreviation to describe all or part of an industry product unless such product or part is electroplated with gold or a gold alloy and such electroplating is of such karat fineness, thickness, and extent of surface coverage that reasonable durability [28] is assured, and unless the term is immediately preceded by a correct designation of the karat fineness of the alloy that is of at least equal conspicuousness as the term used.

(9) Use of any name, terminology, or other term to misrepresent that an industry product is equal or superior to, or different than, a known and established type of industry product with reference to its gold content or method of manufacture.

(c) The following are examples of markings and descriptions that are consistent with the principles described above:

(1) An industry product or part thereof, composed throughout of an alloy of gold may be marked and described as ''Gold'' when such word ''Gold,'' wherever appearing, is immediately preceded by a correct designation of the karat fineness of the alloy, and such karat designation is of equal conspicuousness as the word ''Gold'' (for example, ''14 Karat Gold,'' ''14 K. Gold,'' ''14 Kt. Gold,'' ''9 Karat Gold,'' or ''9 Kt. Gold''). Such product may also be marked and described by a designation of the karat fineness of the gold alloy unaccompanied by the word ''Gold'' (for example, ''14 Karat,'' ''14Kt.,'' ''14 K.,'' or ''9 K.'').

Note to Paragraph (c)(1): Use of the term ''Gold'' or any abbreviation to describe all or part of a product that is composed throughout of gold alloy, but contains a hollow center or interior, may mislead consumers, unless the fact that the product contains a hollow center is disclosed in immediate proximity to the term ''Gold'' or its abbreviation (for example, ''14 Karat Gold-Hollow Center,'' or ''14 K. Gold Tubing,'' when of a gold alloy tubing of such karat fineness). Such products should not be marked or described as ''solid'' or as being solidly of gold or of a gold alloy. For example, when the composition of such a product is 14 karat gold alloy, it should not be described or marked as either ''14 Kt. Solid Gold'' or as ''Solid 14 Kt. Gold.''

(2) An industry product or part thereof on which there has been affixed on all significant surfaces by soldering, brazing, welding, or other mechanical means a plating of gold alloy of not less than 10 karat fineness and of reasonable durability [29] may be marked or described as ''Gold Plate,'' ''Gold Plated,'' ''Gold Overlay,'' ''Rolled Gold Plate,'' ''Rolled Gold Plated,'' or an adequate abbreviation, when such plating constitutes at least 1/40th of the weight of the metal in the entire article and when the term is immediately preceded by a designation of the karat fineness of the plating which is of equal conspicuousness as the term used (for example, ''14 Kt. Gold Overlay,'' or ''14K. R.G.P.''). When such plating constitutes at least 1/20th of the weight of the metal in the entire article, the term ''Gold Filled'' may be used. The terms ''Gold Overlay,'' ''Rolled Gold Plate,'' and ''Rolled Gold Plated'' may be used when the karat fineness designation is immediately preceded by a fraction accurately disclosing the portion of the weight of the metal in the entire article accounted for by the plating, and when such fraction is of equal conspicuousness as the term used (for example, ''1/40th 12 Kt. Rolled Gold Plate'' or ''1/40 12 Kt. R.G.P.'').

(3) An industry product or part thereof on which there has been affixed on all significant surfaces by an electrolytic process an electroplating of gold, or of a gold alloy of not less than 10 karat fineness, which is of reasonable durability [30] and has a minimum thickness throughout equivalent to 0.175 microns (approximately 7/1,000,000ths of an inch) of fine gold,[31] may be marked or described as ''Gold Plate,'' ''Gold Plated,'' ''Gold Electroplate'' or ''Gold Electroplated,'' or so abbreviated, if the term is immediately preceded by a designation of the karat fineness of the plating which is of equal conspicuousness as the term used (*e.g.,* ''12 Karat Gold Electroplate'' or ''12K G.E.P.''). When the electroplating is of the minimum fineness specified above and of a minimum thickness throughout equivalent to two and one half (2½) microns (or approximately 100/1,000,000ths of an inch) of fine gold, the marking or description may be ''Heavy Gold Electroplate'' or ''Heavy Gold Electroplated.'' When electroplatings qualify for the term ''Gold Electroplate'' (or ''Gold Electroplated''), or the term ''Heavy Gold Electroplate'' (or ''Heavy Gold Electroplated''), and have been applied by use of a particular kind of electrolytic process, the marking may be accompanied by identification of the process used, as for example, ''Gold Electroplated (X Process)'' or ''Heavy Gold Electroplated (Y Process).''

(d) The provisions of this section relating to markings and descriptions of industry products and parts thereof are subject to the applicable tolerances of the National Stamping Act or any amendment thereof.[32]

[25] For the purpose of this section, ''reasonable durability'' means that all areas of the plating are sufficiently thick to assure coverage that reasonable consumers would expect from the surface application. Since industry products include items having surfaces and parts of surfaces that are subject to different degrees of wear, the thickness of the surface application for all items or for different areas of the surface of individual items does not necessarily have to be uniform.

[26] See footnote 2.

[27] See footnote 2.

[28] See footnote 2.

[29] See footnote 2.

[30] See footnote 2.

[31] A product containing 1 micron (otherwise known as 1µ) of 12 karat gold is equivalent to one-half micron of 24-karat gold.

[32] Under the National Stamping Act, articles or parts made of gold or of gold alloy that contain no solder have a permissible tolerance of three parts per thousand. If the part tested contains solder, the permissible tolerance is seven parts per thousand. For full text, see 15 U.S.C. 295, *et seq.*

Note to Paragraph (d): Exemptions recognized in the assay of karat gold industry products and in the assay of gold filled, gold overlay, and rolled gold plate industry products, and not to be considered in any assay for quality, are listed in the appendix.

§ 23.4 Misuse of the word "vermeil."

(a) It is unfair or deceptive to represent, directly or by implication, that an industry product is ''vermeil'' if such mark or description misrepresents the product's true composition.

(b) An industry product may be described or marked as ''vermeil'' if it consists of a base of sterling silver coated or plated on all significant surfaces with gold, or gold alloy of not less than 10 karat fineness, that is of reasonable durability [33] and a minimum thickness throughout equivalent to two and one half (2½) microns (or approximately 100/1,000,000ths of an inch) of fine gold.

Note 1 to § 23.4: It is unfair or deceptive to use the term ''vermeil'' to describe a product in which the sterling silver has been covered with a base metal (such as nickel) plated with gold unless there is a disclosure that the sterling silver is covered with a base metal that is plated with gold.

Note 2 to § 23.4: Exemptions recognized in the assay of gold filled, gold overlay, and rolled gold plate industry products are listed in the appendix.

§ 23.5 Misrepresentation as to silver content.

(a) It is unfair or deceptive to misrepresent that an industry product contains silver, or to misrepresent an industry product as having a silver content, plating, electroplating, or coating.

(b) The following are examples of markings or descriptions that may be misleading:

(1) Use of the unqualified word ''silver'' to mark, describe, or otherwise represent all or part of an industry product, including the surface layer of a coated product, unless an equally conspicuous, accurate quality fineness designation indicating the pure silver content in parts per thousand immediately precedes the term (*e.g.,* ''750 silver'').

(2) Use of the words ''solid silver,'' ''Sterling Silver,'' ''Sterling,'' or the abbreviation ''Ster.'' to mark, describe, or otherwise represent all or part of an industry product unless it is at least 925/1,000ths pure silver.

(3) Use of the words ''coin'' or ''coin silver'' to mark, describe, or otherwise represent all or part of an industry product unless it is at least 900/1,000ths pure silver.

(4) Use of the word ''silver'' to mark, describe, or otherwise represent all or part of an industry product that is not composed throughout of silver, but has a surface layer or coating of silver, unless the term is adequately qualified to indicate that the product or part is only coated.

(5) Marking, describing, or otherwise representing all or part of an industry product as being plated or coated with silver unless all significant surfaces of the product or part contain a plating or coating of silver that is of reasonable durability.[34]

(c) The provisions of this section relating to markings and descriptions of industry products and parts thereof are subject to the applicable tolerances of the National Stamping Act or any amendment thereof.[35]

Note 1 to § 23.5: The National Stamping Act provides that silver plated articles shall not ''be stamped, branded, engraved or imprinted with the word 'sterling' or the word 'coin,' either alone or in conjunction with other words or marks.'' 15 U.S.C. 297(a).

Note 2 to § 23.5: Exemptions recognized in the assay of silver industry products are listed in the appendix.

§ 23.6 Misuse of the words "platinum," "iridium," "palladium," "ruthenium," "rhodium," and "osmium."

(a) It is unfair or deceptive to use the words ''platinum,'' ''iridium,'' ''palladium,'' ''ruthenium,'' ''rhodium,'' and ''osmium,'' or any abbreviation to mark or describe all or part of an industry product if such marking or description misrepresents the product's true composition. The Platinum Group Metals (PGM) are Platinum, Iridium, Palladium, Ruthenium, Rhodium, and Osmium.

(b) The following are examples of markings or descriptions that may be misleading: [36]

(1) Use of the word ''Platinum'' or any abbreviation to describe all or part of a product that is not composed throughout of platinum, but has a surface layer or coating of platinum, unless the word ''Platinum'' or its abbreviation is adequately qualified to indicate that the product or part is only coated.

(2) Marking, describing, or otherwise representing all or part of an industry product as being plated or coated with platinum unless all significant surfaces of the product or part contain a plating or coating of platinum that is of reasonable durability.[37]

(3) Use of the word ''Platinum'' or any abbreviation, without qualification, to describe all or part of an industry product (including the surface layer of a coated product) that is not composed throughout of 950 parts per thousand pure Platinum.

(4) Use of the word ''Platinum'' or any abbreviation accompanied by a number indicating the parts per thousand of pure Platinum contained in the product without mention of the number of parts per thousand of other PGM contained in the product, to describe all or part of an industry product that is not composed throughout of at least 850 parts per thousand pure platinum, for example, ''600Plat.''

(5) Use of the word ''Platinum'' or any abbreviation thereof, to mark or describe any product that is not composed throughout of at least 500 parts per thousand pure Platinum.

(6) Use of the word ''Platinum,'' or any abbreviation accompanied by a number or percentage indicating the parts per thousand of pure Platinum contained in the product, to describe all or part of an industry product that contains at least 500 parts per thousand, but less than 850 parts per thousand, pure Platinum, and does not contain at least 950 parts per thousand PGM (for example, ''585 Plat.'') without a clear and conspicuous disclosure, immediately following the name or description of such product:

(i) Of the full composition of the product (by name and not abbreviation) and percentage of each metal; and

(ii) That the product may not have the same attributes or properties as traditional platinum products. *Provided, however,* that the marketer need not make disclosure under this paragraph (b)(6)(ii), if the marketer has competent and reliable scientific evidence that such product does not differ materially from any one product containing at least 850 parts per thousand pure Platinum with respect to the following attributes or properties: Durability, luster, density, scratch resistance, tarnish resistance, hypoallergenicity, ability to be resized or repaired, retention of precious metal over time, and any other attribute or property material to consumers.

Note to Paragraph (b)(6): When using percentages to qualify platinum representations, marketers should convert the

[33] See footnote 2.

[34] See footnote 2.

[35] Under the National Stamping Act, sterling silver articles or parts that contain no solder have a permissible tolerance of four parts per thousand. If the part tested contains solder, the permissible tolerance is ten parts per thousand. For full text, see 15 U.S.C. 294, *et seq.*

[36] See paragraph (c) of this section for examples of acceptable markings and descriptions.

[37] See footnote 2.

amount in parts per thousand to a percentage that is accurate to the first decimal place (*e.g.,* ''58.5% Platinum, 41.5% Cobalt'').

(c) The following are examples of markings and descriptions that are not considered unfair or deceptive:

(1) The following abbreviations for each of the PGM may be used for quality marks on articles: ''Plat.'' or ''Pt.'' for Platinum; ''Irid.'' or ''Ir.'' for Iridium; ''Pall.'' or ''Pd.'' for Palladium; ''Ruth.'' or ''Ru.'' for Ruthenium; ''Rhod.'' or ''Rh.'' for Rhodium; and ''Osmi.'' or ''Os.'' for Osmium.

(2) An industry product consisting of at least 950 parts per thousand pure Platinum may be marked or described as ''Platinum.''

(3) An industry product consisting of 850 parts per thousand pure Platinum, 900 parts per thousand pure Platinum, or 950 parts per thousand pure Platinum may be marked ''Platinum,'' provided that the Platinum marking is preceded by a number indicating the amount in parts per thousand of pure Platinum (for industry products consisting of 950 parts per thousand pure Platinum, the marking described in § 23.7(b)(2) above is also appropriate). Thus, the following markings may be used: ''950Pt.,'' ''950Plat.,'' ''900Pt.,'' ''900Plat.,'' ''850Pt.,'' or ''850Plat.''

(4) An industry product consisting of at least 950 parts per thousand PGM, and of at least 500 parts per thousand pure Platinum, may be marked ''Platinum,'' provided that the mark of each PGM constituent is preceded by a number indicating the amount in parts per thousand of each PGM (*e.g.,* ''600Pt.350Ir.,'' ''600Plat.350Irid.,'' ''550Pt.350Pd.50Ir.,'' or ''550Plat.350Pall.50Irid'').

(5) An industry product consisting of at least 500 parts per thousand, but less than 850 parts per thousand, pure Platinum, and not consisting of at least 950 parts per thousand PGM, may be marked or stamped accurately, with a quality marking on the article, using parts per thousand and standard chemical abbreviations (*e.g.,* ''585 Pt., 415 Co.'').

Note to § 23.6: Exemptions recognized in the assay of platinum industry products are listed in the appendix.

§ 23.7 Disclosure of surface-layer application of rhodium.

It is unfair or deceptive to fail to disclose a surface-layer application of rhodium on products marked or described as precious metal.

§ 23.8 Misrepresentation as to products containing more than one precious metal.

(a) It is unfair or deceptive to misrepresent the relative quantity of each precious metal in a product that contains more than than one precious metal. Marketers should list precious metals in the order of their relative weight in the product from greatest to least (*i.e.,* leading with the predominant metal). Listing precious metals in order of relative weight is not necessary where it is clear to reasonable consumers from context that the metal listed first is not predominant.

(b) The following are examples of markings or descriptions that may be misleading:

(1) Use of the terms ''Platinum + Silver'' to describe a product that contains more silver than platinum by weight.

(2) Use of the terms ''14K/Sterling'' to describe a product that contains more silver than gold by weight.

(c) The following are examples of markings and descriptions that are not considered unfair or deceptive:

(1) For a product comprised primarily of silver with a surface-layer application of platinum, ''900 platinum over silver.''

(2) For a product comprised primarily of silver with visually distinguishable parts of gold, ''14k gold-accented silver.''

(3) For a product comprised primarily of gold with visually distinguishable parts of platinum, ''850 Platinum inset, 14K gold ring.''

§ 23.9 Misrepresentation as to content of pewter.

(a) It is unfair or deceptive to mark, describe, or otherwise represent all or part of an industry product as ''Pewter'' or any abbreviation if such mark or description misrepresents the product's true composition.

(b) An industry product or part thereof may be described or marked as ''Pewter'' or any abbreviation if it consists of at least 900 parts per 1,000 Grade A Tin, with the remainder composed of metals appropriate for use in pewter.

§ 23.10 Additional guidance for the use of quality marks.

As used in these guides, the term *quality mark* means any letter, figure, numeral, symbol, sign, word, or term, or any combination thereof, that has been stamped, embossed, inscribed, or otherwise placed on any industry product and which indicates or suggests that any such product is composed throughout of any precious metal or any precious metal alloy or has a surface or surfaces on which there has been plated or deposited any precious metal or precious metal alloy. Included are the words ''gold,'' ''karat,'' ''carat,'' ''silver,'' ''sterling,'' ''vermeil,'' ''platinum,'' ''iridium,'' ''palladium,'' ''ruthenium,'' ''rhodium,'' or ''osmium,'' or any abbreviations thereof, whether used alone or in conjunction with the words ''filled,'' ''plated,'' ''overlay,'' or ''electroplated,'' or any abbreviations thereof. Quality markings include those in which the words or terms ''gold,'' ''karat,'' ''silver,'' ''vermeil,'' ''platinum'' (or platinum group metals), or their abbreviations are included, either separately or as suffixes, prefixes, or syllables.

(a) *Deception as to applicability of marks.* (1) If a quality mark on an industry product is applicable to only part of the product, the part of the product to which it is applicable (or inapplicable) should be disclosed when, absent such disclosure, the location of the mark misrepresents the product or part's true composition.

(2) If a quality mark is applicable to only part of an industry product, but not another part which is of similar surface appearance, each quality mark should be closely accompanied by an identification of the part or parts to which the mark is applicable.

(b) *Deception by reason of difference in the size of letters or words in a marking or markings.* It is unfair or deceptive to place a quality mark on a product in which the words or letters appear in greater size than other words or letters of the mark, or when different markings placed on the product have different applications and are in different sizes, when the net impression of any such marking would be misleading as to the metallic composition of all or part of the product. (An example of improper marking would be the marking of a gold electroplated product with the word ''electroplate'' in small type and the word ''gold'' in larger type, with the result that purchasers and prospective purchasers of the product might only observe the word ''gold.'')

Note 1 to § 23.10: Legibility of markings. If a quality mark is engraved or stamped on an industry product, or is printed on a tag or label attached to the product, the quality mark should be of sufficient size type as to be legible to persons of normal vision, should be so placed as likely to be observed by purchasers, and should be so attached as to remain thereon until consumer purchase.

Note 2 to § 23.10: Disclosure of identity of manufacturers, processors, or distributors. The National Stamping Act provides that any person, firm, corporation, or association, being a manufacturer or dealer subject to section 294 of the Act, who applies or causes to be applied a quality mark, or imports any article bearing a quality mark ''which indicates or purports to indicate that such article is made in whole or in part of gold or silver or of an alloy of either metal'' shall apply to the article the trademark or name of such person. 15 U.S.C. 297.

§ 23.11 Misuse of ''corrosion proof,'' ''noncorrosive,'' ''corrosion resistant,'' ''rust proof,'' ''rust resistant,'' etc.

(a) It is unfair or deceptive to:

(1) Use the terms ''corrosion proof,'' ''noncorrosive,'' ''rust proof,'' or any other term of similar meaning to describe an industry product unless all parts of the product will be immune from rust and other forms of corrosion during the life expectancy of the product; or

(2) Use the terms ''corrosion resistant,'' ''rust resistant,'' or any other term of similar meaning to describe an industry product unless all parts of the product are of such composition as to not be subject to material damage by corrosion or rust during the major portion of the life expectancy of the product under normal conditions of use.

(b) Among the metals that may be considered as corrosion (and rust) resistant are: Pure nickel; gold alloys of not less than 10 Kt. fineness; and austenitic stainless steels.

§ 23.12 Definition and misuse of the word ''diamond.''

(a) A diamond is a mineral consisting essentially of pure carbon crystallized in the isometric system. It is found in many colors. Its hardness is 10; its specific gravity is approximately 3.52; and it has a refractive index of 2.42.

(b) It is unfair or deceptive to use the unqualified word ''diamond'' to describe or identify any object or product not meeting the requirements specified in the definition of diamond provided above, or which, though meeting such requirements, has not been symmetrically fashioned with at least seventeen (17) polished facets.

Note to Paragraph (b): It is unfair or deceptive to represent, directly or by implication, that industrial grade diamonds or other non-jewelry quality diamonds are of jewelry quality.

(c) The following are examples of descriptions that are not considered unfair or deceptive:

(1) The use of the words ''rough diamond'' to describe or designate uncut or unfaceted objects or products satisfying the definition of diamond provided above; or

(2) The use of the word ''diamond'' to describe or designate objects or products satisfying the definition of diamond but which have not been symmetrically fashioned with at least seventeen (17) polished facets when, in immediate conjunction with the word ''diamond,'' there is either a disclosure of the number of facets and shape of the diamond or the name of a type of diamond that denotes shape and that usually has less than seventeen (17) facets (*e.g.,* ''rose diamond'').

(3) The use of the word ''cultured'' to describe laboratory-created diamonds that have essentially the same optical, physical, and chemical properties as mined diamonds if the term is qualified by a clear and conspicuous disclosure (for example, the words ''laboratory-created,'' ''laboratory-grown,'' ''[manufacturer name]-created,'' or some other word or phrase of like meaning) conveying that the product is not a mined stone.

Note to Paragraph (c): Additional guidance about imitation and laboratory-created diamond representations and misuse of the words ''real,'' ''genuine,'' ''natural,'' ''precious,'' ''semi-precious,'' and similar terms is set forth in §§ 23.25 and 23.27.

§ 23.13 Misuse of the words ''flawless,'' ''perfect,'' etc.

(a) It is unfair or deceptive to use the word ''flawless'' to describe any diamond that discloses flaws, cracks, inclusions, carbon spots, clouds, internal lasering, or other blemishes or imperfections of any sort when examined under a corrected magnifier at 10-power, with adequate illumination, by a person skilled in diamond grading.

(b) It is unfair or deceptive to use the word ''perfect,'' or any representation of similar meaning, to describe any diamond unless the diamond meets the definition of ''flawless'' and is not of inferior color or make.

(c) It is unfair or deceptive to use the words ''flawless'' or ''perfect'' to describe a ring or other article of jewelry having a ''flawless'' or ''perfect'' principal diamond or diamonds, and supplementary stones that are not of such quality, unless there is a disclosure that the description applies only to the principal diamond or diamonds.

§ 23.14 Disclosure of treatments to diamonds.

A diamond is a gemstone product. Treatments to diamonds should be disclosed in the manner prescribed in § 23.24 of these guides (Disclosure of treatments to gemstones).

§ 23.15 Misuse of the term ''blue white.''

It is unfair or deceptive to use the term ''blue white'' or any representation of similar meaning to describe any diamond that under normal, north daylight or its equivalent shows any color or any trace of any color other than blue or bluish.

§ 23.16 Misuse of the term ''properly cut,'' etc.

It is unfair or deceptive to use the terms ''properly cut,'' ''proper cut,'' ''modern cut,'' or any representation of similar meaning to describe any diamond that is lopsided, or is so thick or so thin in depth as to detract materially from the brilliance of the stone.

Note to § 23.16: Stones that are commonly called ''fisheye'' or ''old mine'' should not be described as ''properly cut,'' ''modern cut,'' etc.

§ 23.17 Misuse of the words ''brilliant'' and ''full cut.''

It is unfair or deceptive to use the unqualified expressions ''brilliant,'' ''brilliant cut,'' or ''full cut'' to describe, identify, or refer to any diamond except a round diamond that has at least thirty-two (32) facets plus the table above the girdle and at least twenty-four (24) facets below.

Note to § 23.17: Such terms should not be applied to single or rose-cut diamonds. They may be applied to emerald-(rectangular) cut, pear-shaped, heart-shaped, oval-shaped, and marquise-(pointed oval) cut diamonds meeting the above-stated facet requirements when, in immediate conjunction with the term used, the form of the diamond is disclosed.

§ 23.18 Misrepresentation of weight and ''total weight.''

(a) It is unfair or deceptive to misrepresent the weight of a diamond.

(b) It is unfair or deceptive to use the word ''point'' or any abbreviation in any representation, advertising, marking, or labeling to describe the weight of a diamond, unless the weight is also stated as decimal parts of a carat (*e.g.,* 25 points or .25 carat).

Note to Paragraph (b): A carat is a standard unit of weight for a diamond and is equivalent to 200 milligrams (1/5 gram). A point is one one-hundredth (1/100) of a carat.

(c) If diamond weight is stated as decimal parts of a carat (*e.g.,* .47 carat), the stated figure should be accurate to the last decimal place. If diamond weight is stated to only one decimal place (*e.g.,* .5 carat), the stated figure should be accurate to the second decimal place (*e.g.,* ''.5 carat'' could represent a diamond weight between .495–.504).

(d) If diamond weight is stated as fractional parts of a carat, a conspicuous disclosure of the fact that the diamond weight is not exact should be made in close proximity to the fractional representation and a disclosure of a reasonable range of weight for each fraction (or the weight tolerance being used) should also be made.

Note to Paragraph (d): When fractional representations of diamond weight are made, as described in paragraph (d) of this section, in catalogs or other printed materials, the disclosure of the fact that the actual diamond weight is within a specified range should be made conspicuously on every page where a fractional representation is made. Such disclosure may refer to a chart or other detailed explanation of the actual ranges used. For example, ''Diamond weights are not exact; see chart on p. X for ranges.''

§ 23.19 Definitions of various pearls.

As used in these guides, the terms set forth below have the following meanings:

(a) *Pearl:* A calcareous concretion consisting essentially of alternating concentric layers of carbonate of lime and organic material formed within the body of certain mollusks, the result of an abnormal secretory process caused by an irritation of the mantle of the mollusk following the intrusion of some foreign body inside the shell of the mollusk, or due to some abnormal physiological condition in the mollusk, neither of which has in any way been caused or induced by humans.

(b) *Cultured pearl:* The composite product created when a nucleus (usually a sphere of calcareous mollusk shell) planted by humans inside the shell or in the mantle of a mollusk is coated with nacre by the mollusk.

(c) *Imitation pearl:* A manufactured product composed of any material or materials that simulate in appearance a pearl or cultured pearl.

(d) *Seed pearl:* A small pearl, as defined in paragraph (a), that measures approximately two millimeters or less.

§ 23.20 Misuse of the word ''pearl.''

(a) It is unfair or deceptive to use the unqualified word ''pearl'' or any other word or phrase of like meaning to describe, identify, or refer to any object or product that is not in fact a pearl, as defined in § 23.19(a).

(b) It is unfair or deceptive to use the word ''pearl'' to describe, identify, or refer to a cultured pearl unless it is immediately preceded, with equal conspicuousness, by the word ''cultured'' or ''cultivated,'' or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

(c) It is unfair or deceptive to use the word ''pearl'' to describe, identify, or refer to an imitation pearl unless it is immediately preceded, with equal conspicuousness, by the word ''artificial,'' ''imitation,'' or ''simulated,'' or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

(d) It is unfair or deceptive to use the terms ''faux pearl,'' ''fashion pearl,'' ''Mother of Pearl,'' or any other such term to describe or qualify an imitation pearl product unless it is immediately preceded, with equal conspicuousness, by the word ''artificial,'' ''imitation,'' or ''simulated,'' or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

§ 23.21 Misuse of terms such as ''cultured pearl,'' ''seed pearl,'' ''Oriental pearl,'' ''natura,'' ''kultured,'' ''real,'' ''synthetic,'' and regional designations.

(a) It is unfair or deceptive to use the term ''cultured pearl,'' ''cultivated pearl,'' or any other word, term, or phrase of like meaning to describe, identify, or refer to any imitation pearl.

(b) It is unfair or deceptive to use the term ''seed pearl'' or any word, term, or phrase of like meaning to describe, identify, or refer to a cultured or an imitation pearl, without using the appropriate qualifying term ''cultured'' (*e.g.,* ''cultured seed pearl'') or ''simulated,'' ''artificial,'' or ''imitation'' (*e.g.,* ''imitation seed pearl'').

(c) It is unfair or deceptive to use the term ''Oriental pearl'' or any word, term, or phrase of like meaning to describe, identify, or refer to any industry product other than a pearl taken from a salt water mollusk and of the distinctive appearance and type of pearls obtained from mollusks inhabiting the Persian Gulf and recognized in the jewelry trade as Oriental pearls.

(d) It is unfair or deceptive to use the word ''Oriental'' to describe, identify, or refer to any cultured or imitation pearl.

(e) It is unfair or deceptive to use the word ''natura,'' ''natural,'' ''nature's,'' or any word, term, or phrase of like meaning to describe, identify, or refer to a cultured or imitation pearl. It is unfair or deceptive to use the term ''organic'' to describe, identify, or refer to an imitation pearl, unless the term is qualified in such a way as to make clear that the product is not a natural or cultured pearl.

(f) It is unfair or deceptive to use the term ''kultured,'' ''semi-cultured pearl,'' ''cultured-like,'' ''part-cultured,'' ''premature cultured pearl,'' or any word, term, or phrase of like meaning to describe, identify, or refer to an imitation pearl.

(g) It is unfair or deceptive to use the term ''South Sea pearl'' unless it describes, identifies, or refers to a pearl that is taken from a salt water mollusk of the Pacific Ocean South Sea Islands, Australia, or Southeast Asia. It is unfair or deceptive to use the term ''South Sea cultured pearl'' unless it describes, identifies, or refers to a cultured pearl formed in a salt water mollusk of the Pacific Ocean South Sea Islands, Australia, or Southeast Asia.

(h) It is unfair or deceptive to use the term ''Biwa cultured pearl'' unless it describes, identifies, or refers to cultured pearls grown in fresh water mollusks in the lakes and rivers of Japan.

(i) It is unfair or deceptive to use the word ''real,'' ''genuine,'' ''precious,'' or any word, term, or phrase of like meaning to describe, identify, or refer to any imitation pearl.

(j) It is unfair or deceptive to use the word ''synthetic'' or similar terms to describe cultured or imitation pearls.

(k) It is unfair or deceptive to use the terms ''Japanese Pearls,'' ''Chinese Pearls,'' ''Mallorca Pearls,'' or any regional designation to describe, identify, or refer to any cultured or imitation pearl, unless the term is immediately preceded, with equal conspicuousness, by the word ''cultured,'' ''artificial,'' ''imitation,'' or ''simulated,'' or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is a cultured or imitation pearl.

§ 23.22 Misrepresentation as to cultured pearls.

It is unfair or deceptive to misrepresent the manner in which cultured pearls are produced, the size of the nucleus artificially inserted in the mollusk and included in cultured pearls, the length of time that such products remained in the mollusk, the thickness of the nacre coating, the value and quality of cultured pearls as compared with the value and quality of pearls and imitation pearls, or any other material matter relating to the formation, structure, properties, characteristics, and qualities of cultured pearls.

§ 23.23 Disclosure of treatments to pearls and cultured pearls.

It is unfair or deceptive to fail to disclose that a pearl or cultured pearl has been treated if:

(a) The treatment is not permanent. The seller should disclose that the pearl or cultured pearl has been treated and that the treatment is or may not be permanent;

(b) The treatment creates special care requirements for the pearl or cultured pearl. The seller should disclose that the pearl or cultured pearl has been treated and has special care requirements. It is also recommended that the seller disclose the special care requirements to the purchaser; or

(c) The treatment has a significant effect on the product's value. The seller should disclose that the pearl or cultured pearl has been treated.

Note to § 23.23: The disclosures outlined in this section are applicable to sellers at every level of trade, as defined in § 23.0(b) of these guides, and they may be made at the point of sale prior to sale, except that where a product can be purchased without personally viewing the product (*e.g.,* direct mail catalogs, online services, televised shopping programs), disclosure should be made in the solicitation for, or description of, the product.

§ 23.24 Disclosure of treatments to gemstones.

It is unfair or deceptive to fail to disclose that a gemstone has been treated if:

(a) The treatment is not permanent. The seller should disclose that the gemstone has been treated and that the treatment is or may not be permanent;

(b) The treatment creates special care requirements for the gemstone. The seller should disclose that the gemstone has been treated and has special care requirements. It is also recommended that the seller disclose the special care requirements to the purchaser; or

(c) The treatment has a significant effect on the stone's value. The seller should disclose that the gemstone has been treated.

Note to § 23.24: The disclosures outlined in this section are applicable to sellers at every level of trade, as defined in § 23.0(b) of these guides, and they may be made at the point of sale prior to sale, except that where a product can be purchased without personally viewing the product (*e.g.,* direct mail catalogs, online services, televised shopping programs), disclosure should be made in the solicitation for, or description of, the product.

§ 23.25 Misuse of the words "ruby," "sapphire," "emerald," "topaz," "stone," "birthstone," "gem," "gemstone," etc.

(a) It is unfair or deceptive to use the unqualified words ''ruby,'' ''sapphire,'' ''emerald,'' ''topaz,'' or the name of any other precious or semi-precious stone to describe any product that is not in fact a mined stone of the type described.

(b) It is unfair or deceptive to use the word ''ruby,'' ''sapphire,'' ''emerald,'' ''topaz,'' or the name of any other precious or semi-precious stone, or the word ''stone,'' ''birthstone,'' ''gem,'' ''gemstone,'' or similar term to describe a laboratory-grown, laboratory-created, [manufacturer name]-created, synthetic, imitation, or simulated stone, unless such word or name is immediately preceded with equal conspicuousness by the word ''laboratory-grown,'' ''laboratory-created,'' ''[manufacturer name]-created,'' or some other word or phrase of like meaning, or by the word ''imitation'' or ''simulated,'' so as to disclose clearly the nature of the product and the fact it is not a mined gemstone.

Note 1 to Paragraph (b): The use of the word ''faux'' to describe a laboratory-created or imitation stone is not an adequate disclosure that the stone is not a mined stone.

Note 2 to Paragraph (b): Marketers may use the word ''cultured'' to describe laboratory-created gemstone products that have essentially the same optical, physical, and chemical properties as the named stone if the term (*e.g.,* ''cultured ruby'') is qualified by a clear and conspicuous disclosure (for example, the words ''laboratory-created,'' ''laboratory-grown,'' ''[manufacturer name]-created,'' or some other word or phrase of like meaning) conveying that the product is not a mined stone. Additional guidance regarding the use of ''cultured'' to describe a laboratory-created diamond is set forth in § 23.12(c)(3).

(c) It is unfair or deceptive to use the word ''laboratory-grown,'' ''laboratory-created,'' ''[manufacturer name]-created,'' ''synthetic,'' or other word or phrase of like meaning with the name of any natural stone to describe any industry product unless such product has essentially the same optical, physical, and chemical properties as the stone named.

(d) It is unfair or deceptive to describe products made with gemstone material and any amount of filler or binder, such as lead glass, in the following way:

(1) With the unqualified word ''ruby,'' ''sapphire,'' ''emerald,'' ''topaz,'' or name of any other precious or semi-precious stone;

(2) As a ''treated ruby,'' ''treated sapphire,'' ''treated emerald,'' ''treated topaz,'' or ''treated [gemstone name]'';

(3) As a ''laboratory-grown [gemstone name],'' ''laboratory-created [gemstone name],'' ''[manufacturer name]-created [gemstone name],'' ''or ''synthetic [gemstone name];'' or

(4) As a ''composite [gemstone name],'' ''hybrid [gemstone name],'' or ''manufactured [gemstone name],'' unless the term is qualified to disclose clearly and conspicuously that the product: (A) Does not have the same characteristics as the named stone; and (B) requires special care. It is further recommended that the seller disclose the special care requirements to the purchaser.

§ 23.26 Misrepresentation as to varietal name.

(a) It is unfair or deceptive to mark or describe an industry product with the incorrect varietal name.

(b) The following are examples of markings or descriptions that may be misleading:

(1) Use of the term ''yellow emerald'' to describe golden beryl or heliodor.

(2) Use of the term ''green amethyst'' to describe prasiolite.

Note to § 23.26: A varietal name is given for a division of gem species or genus based on a color, type of optical phenomenon, or other distinguishing characteristic of appearance.

§ 23.27 Misuse of the words "real," "genuine," "natural," "precious," etc.

It is unfair or deceptive to use the word ''real,'' ''genuine,'' ''natural,'' ''precious,'' ''semi-precious,'' or similar terms to describe any industry product that is manufactured or produced artificially.

§ 23.28 Misuse of the words "flawless," "perfect," etc.

(a) It is unfair or deceptive to use the word ''flawless'' as a quality description of any gemstone that discloses blemishes, inclusions, or clarity faults of any sort when examined under a corrected magnifier at 10-power, with adequate illumination, by a person skilled in gemstone grading.

(b) It is unfair or deceptive to use the word ''perfect'' or any representation of similar meaning to describe any gemstone unless the gemstone meets the definition of ''flawless'' and is not of inferior color or make.

(c) It is unfair or deceptive to use the word ''flawless,'' ''perfect,'' or any representation of similar meaning to describe any imitation gemstone.

Appendix to Part 23—Exemptions Recognized in the Assay for Quality of Gold Alloy, Gold Filled, Gold Overlay, Rolled Gold Plate, Silver, and Platinum Industry Products

(a) Exemptions recognized in the industry and not to be considered in any assay for quality of a karat gold industry product include springs, posts, and separable backs of lapel buttons, posts and nuts for attaching interchangeable ornaments, bracelet and necklace snap tongues, metallic parts completely and permanently encased in a nonmetallic covering, field pieces and bezels for lockets,[38] and wire pegs or rivets used for applying mountings and other ornaments, which mountings or ornaments shall be of the quality marked.

Note to Paragraph (a): Exemptions recognized in the industry and not to be considered in any assay for quality of a karat gold optical product include: the hinge assembly (barrel or other special types such as are customarily used in plastic frames); washers, bushings, and nuts of screw assemblies; dowels; springs for spring shoe

[38] Field pieces of lockets are those inner portions used as frames between the inside edges of the locket and the spaces for holding pictures. Bezels are the separable inner metal rings to hold the pictures in place.

straps; metal parts permanently encased in a non-metallic covering; and for oxfords,[39] coil and joint springs.

(b) Exemptions recognized in the industry and not to be considered in any assay for quality of a gold filled, gold overlay and rolled gold plate industry product, other than watchcases, include joints, catches, screws, pin stems, pins of scarf pins, hat pins, etc., field pieces and bezels for lockets, posts and separate backs of lapel buttons, bracelet and necklace snap tongues, springs, and metallic parts completely and permanently encased in a nonmetallic covering.

Note to Paragraph (b): Exemptions recognized in the industry and not to be considered in any assay for quality of a gold filled, gold overlay and rolled gold plate optical product include: Screws; the hinge assembly (barrel or other special types such as are customarily used in plastic frames); washers, bushings, tubes and nuts of screw assemblies; dowels; pad inserts; springs for spring shoe straps, cores and/or inner windings of comfort cable temples; metal parts permanently encased in a nonmetallic covering; and for oxfords, the handle and catch.

(c) Exemptions recognized in the industry and not to be considered in any assay for quality of a silver industry product include screws, rivets, springs, spring pins for wrist watch straps; posts and separable backs of lapel buttons; wire pegs, posts, and nuts used for applying mountings or other ornaments, which mountings or ornaments shall be of the quality marked; pin stems (*e.g.,* of badges, brooches, emblem pins, hat pins, and scarf pins, etc.); levers for belt buckles; blades and skeletons of pocket knives; field pieces and bezels for lockets; bracelet and necklace snap tongues; any other joints, catches, or screws; and metallic parts completely and permanently encased in a nonmetallic covering.

(d) Exemptions recognized in the industry and not to be considered in any assay for quality of an industry product of silver in combination with gold include joints, catches, screws, pin stems, pins of scarf pins, hat pins, etc., posts and separable backs of lapel buttons, springs, bracelet and necklace snap tongues, and metallic parts completely and permanently encased in a nonmetallic covering.

(e) Exemptions recognized in the industry and not to be considered in any assay for quality of a platinum industry product include springs, winding bars, sleeves, crown cores, mechanical joint pins, screws, rivets, dust bands, detachable movement rims, hat pin stems, and bracelet and necklace snap tongues.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2018–17454 Filed 8–15–18; 8:45 am]

BILLING CODE 6750–01–P

[39] Oxfords are a form of eyeglasses where a flat spring joins the two eye rims and the tension it exerts on the nose serves to hold the unit in place. Oxfords are also referred to as pince nez.

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 24

[CBP Dec. 18–09; Docket No. USCBP–2018–0033]

RIN 1515–AE39

Refund of Alcohol Excise Tax

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

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document updates language in the U.S. Customs and Border Protection (CBP) regulations to reflect the current organization of CBP and the Department of the Treasury. The document also eliminates a restriction pertaining to CBP's authority to refund excessive duties, taxes, fees, or interest imposed on distilled spirits, wine, and beer to facilitate implementation of Subpart A (Craft Beverage Modernization and Tax Reform) of Part IX of the Tax Cuts and Jobs Act, signed December 22, 2017, commonly referred to as the Craft Beverage Modernization Act.

DATES: This interim final rule is effective August 16, 2018; comments must be received by October 15, 2018.

ADDRESSES: You may submit comments, identified by docket number USCBP–2018–0033, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

Instructions: All submissions received must include the agency name and docket title for this rulemaking, and must reference docket number USCBP–2018–0033. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of the document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during business days between the hours of 9:00 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Sharolyn J. McCann, Supervisory Program Manager, Office of Trade, U.S. Customs and Border Protection, (571) 468–5478, *sharolyn.j.mccann@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. *See* **ADDRESSES** above for information on how to submit comments. U.S. Customs and Border Protection (CBP) also invites comments that relate to the effects that might result from this interim rule. Comments that will provide the most assistance to CBP will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

CBP is amending § 24.36 of title 19 of the Code of Federal Regulations (19 CFR 24.36) regarding the authority of CBP to issue refunds of excessive duties, taxes, fees, or interest to:

(1) Reflect changes in departmental organization, a statutory citation to account for the Internal Revenue Code of 1986, and current form names and numbers. The current text refers to the Department of the Treasury's (Treasury) organization that preceded the 1972 transfer of certain functions from the Internal Revenue Service to the Bureau of Alcohol, Tobacco and Firearms. *See* Treasury Order 221 (June 6, 1972). The Homeland Security Act of 2002 (Pub. L. 107–296, December 25, 2002) later transferred these functions described in 19 CFR 24.36(e) to the Alcohol and Tobacco Tax and Trade Bureau (TTB).

The reference to Internal Revenue Form 843 in § 24.36(e)(1) predates the 1963 republication of chapter I of title 19 (*see* 28 FR 14546, 14815 (Dec. 31, 1963)) and is obsolete. The current IRS Form 843 is not related to excise tax. Current TTB Form 5620.8, ''Claim—

Alcohol, Tobacco, and Firearms Taxes,'' is the modern equivalent of the form referred to in the regulations.

CBP is also removing references to the ''port director'' to allow for CBP to issue refunds either through electronic methods or by the ports or the Centers of Excellence and Expertise, and is making other grammatical changes as appropriate.

(2) Add to CBP's refund authority the ability to refund taxes paid prior to assigning a reduced tax rate or tax credit for alcoholic beverages, including beer, wine, and distilled spirits, as allowed by sections 13801–13808 (Subpart A—Craft Beverage Modernization and Tax Reform, of Part IX) of the Tax Cuts and Jobs Act of 2017 (Pub. L. 115–97) signed December 22, 2017, commonly referred to as the Craft Beverage Modernization Act (CBMA).

The CBMA amended the Internal Revenue Code for two calendar years with respect to the tax treatment of alcoholic beverages, including beer, wine, and distilled spirits. For an importer to be eligible to receive a reduced tax rate or a tax credit, the importer must be able to substantiate that the foreign producer has assigned an allotment of its reduced tax rate or tax credits to the beer, wine, or distilled spirits imported by that importer. The new § 24.36(d)(10) makes it clear that CBP has authority to refund the difference between the full excise taxes an importer pays at the time of entry summary filing and the CBMA's lower effective tax rate. An importer must request and substantiate its entitlement to the reduced tax rate or tax credit appropriately.

Inapplicability of Notice and Delayed Effective Date

The Administrative Procedure Act (APA) requirements in 5 U.S.C. 553 govern agency rulemaking procedures. Section 553(b) of the APA generally requires notice and public comment before issuance of a final rule. In addition, section 553(d) of the APA requires that a final rule have a 30-day delayed effective date. The APA, however, provides exceptions from the prior notice and public comment requirement and the delayed effective date requirements, when an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest.

Treasury and CBP find that prior notice and comment are unnecessary and that good cause exists to issue these regulations effective upon publication. Prior notice and comment are unnecessary because the rule does not substantively alter the underlying rights or interests of importers or filers, but instead makes technical corrections and makes clear that importers may obtain the benefit of a lower effective tax rate by filing a refund claim with CBP.

Executive Orders 13563, 12866, and 13771

Executive Orders (E.O.) 13563 (''Improving Regulation and Regulatory Review'') and 12866 (''Regulatory Planning and 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. E.O. 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.''

This interim rule is not a ''significant regulatory action,'' under section 3(f) of E.O. 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed this regulation. As this rule is not a significant regulatory action, this rule is exempt from the requirements of E.O. 13771. *See* OMB's Memorandum titled ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs''' (April 5, 2017).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

Paperwork Reduction Act (PRA)

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The information collection activities associated with the existing requirements related to the submission of a TTB Form 5620.8 are currently approved by OMB under OMB control number 1513–0030. There is no change in burden hours as a result of this rule.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his or her delegate) to approve regulations related to certain CBP revenue functions.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Harbors, Reporting and recordkeeping requirements, Taxes.

Amendments to Part 24 of the CBP Regulations

For the reasons set forth in the preamble, 19 CFR part 24 is amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 1. The general citation for part 24 continues, and the specific authority citation for § 24.36 is revised, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section 24.36 also issued under 26 U.S.C. 6423; Pub. L. 115–97.

■ 2. In § 24.36:

■ a. Paragraph (d) introductory text is revised;

■ b. Amend paragraph (d)(8) by removing the word ''or'' at the end of the paragraph;

■ c. Amend paragraph (d)(9) by removing the period at the end of the paragraph and adding in its place ''; or'';

■ d. Paragraph (d)(10) is added; and

■ e. Paragraphs (e)(1) through (3) are revised.

The revisions and additions read as follows:

§ 24.36 Refunds of excessive duties, taxes, etc.

* * * * *

(d) The authority of CBP to make refunds pursuant to paragraphs (a), (b), and (c) of this section of excessive deposits of alcohol or tobacco taxes, as defined in section 6423(d)(1), Internal Revenue Code of 1986, as amended (26

U.S.C. 6423(d)(1)), is confined to cases of the types which are excepted from the application of section 6423, Internal Revenue Code of 1986, as amended (26 U.S.C. 6423). The excepted types of cases and, therefore, the types in which CBP is authorized to make refunds of such taxes are those in which:

* * * * *

(10) For alcohol excise taxes imposed under the Internal Revenue Code, the refund of tax is claimed pursuant to the assignment of a reduced tax rate or tax credit to an importer by a foreign producer in accordance with CBP implementation of sections 13801–13808 of Public Law 115–97 (December 22, 2017).

(e) * * *

(1) CBP will provide the following notice to the importer of record: ''Claim for refund of any overpayment of internal revenue tax on this entry must be executed and filed with the Director, National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau (TTB), in accordance with TTB regulations (Title 27 of the Code of Federal Regulations).'' On request of the claimant, CBP will issue a statement identifying the entry, showing the amount of internal revenue tax deposited with respect to each entry for which a claim on TTB Form 5620.8 is to be made, and showing the date of issuance of the notice of refund of duty.

(2) The claim must be executed on TTB Form 5620.8 (Claim—Alcohol, Tobacco, and Firearms Taxes) and must be filed with the Director, National Revenue Center, TTB. The certified statement must be attached to and filed in support of such claim which may include refunds under more than one entry but is limited to refunds under entries filed at the same port and the same internal revenue region. The data to be shown on the claim must be as prescribed in TTB regulations, with the exception that any data on the certified statement also required to be shown in the claim need not be restated in the claim.

(3) The date of allowance of refund or credit in respect of such tax for the purposes of section 6407, Internal Revenue Code of 1986, as amended (26 U.S.C. 6407), will be that date on which a claim is perfected and the refund is authorized for scheduling under the applicable TTB regulations.

Kevin K. McAleenan,
Commissioner.

Approved: August 13, 2018.

Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 2018–17710 Filed 8–15–18; 8:45 am]
BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2018–0732]

RIN 1625–AA08

Special Local Regulation; Michigan Championships; Detroit River; Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation for certain waters of the Detroit River, Detroit, MI. This action is necessary to ensure safety of life on navigable waters immediately prior to, during, and after the swim portion of the Michigan Championship Triathlon.

DATES: This temporary final rule is effective from 7 a.m. until 11 a.m. on September 2, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0732 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 on this temporary rule, call or email Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9564, or email *Tracy.M.Girard@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of this swim event until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect participants, mariners and vessels from the hazards associated with this event.

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 of this rule would inhibit the Coast Guard's ability to protect participants, mariners and vessels from the hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Detroit (COTP) has determined that the likely combination of recreation vessels, commercial vessels, and an unknown number of spectators in close proximity to the swim portions of a triathlon along the water pose extra and unusual hazards to public safety and property. Therefore, the COTP is establishing a special local regulation around the event location to help minimize risks to safety of life and property during this event.

IV. Discussion of the Rule

This rule establishes a temporary special local regulation from 7 a.m. until 11 a.m. on September 2, 2018. In light of the aforementioned hazards, the COTP has determined that a special local regulation is necessary to protect spectators, vessels, and participants. The special local regulation will encompass the following waterway: All waters of the Detroit River and Belle Isle Beach between the following two lines: The first line is drawn directly across the channel from position 42°20.517′ N, 082°59.159′ W to 42°20.705′ N, 082°59.233′ W (NAD 83); the second line, to the north, is drawn directly across the channel from position 42°20.754′ N, 082°58.681′ W to 42°20.997′ N, 082°58.846′ W (NAD 83).

An on-scene representative of the COTP may permit vessels to transit the area when no race activity is occurring. The on-scene representative may be present on any Coast Guard, state, or local law enforcement vessel assigned to patrol the event. Vessel operators desiring to transit through the regulated area must contact the Coast Guard Patrol Commander to obtain permission to do so. The COTP or his designated on-scene representative may be contacted via VHF Channel 16 or at (313) 568–9560.

The COTP or his designated on-scene representative will notify the public of the enforcement of this rule by all appropriate means, including a Broadcast Notice to Mariners and Local Notice to Mariners.

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 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

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 around this special local regulation zone which will impact a small designated area of the Detroit River from 7 a.m. to 11 a.m. on September 2, 2018. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the special local regulation and the rule allows vessels to seek permission to enter the area.

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 special local regulation may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under 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 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 Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting three hours that will prohibit entry into a designated area. It is categorically excluded from further review under paragraph L[61] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration 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 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; 33 CFR 1.05–1.

■ 2. Add § 100.T09–0732 to read as follows:

§ 100.T09–0732 Special Local Regulation; Michigan Championships; Detroit River; Detroit, MI.

(a) *Location.* A regulated area is established to encompass the following waterway: All waters of the Detroit River and Belle Isle Beach between the following two lines: The first line is drawn directly across the channel from position 42°20.517′ N, 082°59.159′ W to 42°20.705′ N, 082°59.233′ W (NAD 83); the second line, to the north, is drawn directly across the channel from position 42°20.754′ N, 082°58.681′ W to 42°20.997′ N, 082°58.846′ W (NAD 83).

(b) *Enforcement period.* The regulated area described in paragraph (a) of this section will be enforced from 7 a.m. until 11 a.m. on September 2, 2018.

(c) *Special local regulations.* (1) Vessels transiting through the regulated area are to maintain the minimum speeds for safe navigation.

(2) Vessel operators desiring to operate in the regulated area must contact the Coast Guard Patrol Commander to obtain permission to do so. The Captain of the Port Detroit (COTP) or his on-scene representative may be contacted via VHF Channel 16 or at (313) 568–9560. Vessel operators given permission to operate within the regulated area must comply with all directions given to them by the COTP or his on-scene representative.

(3) The ''on-scene representative'' of the COTP Detroit is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port Detroit to act on his behalf.

Dated: August 10, 2018.

Jeffrey W. Novak,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2018–17699 Filed 8–15–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0683]

RIN 1625–AA00

Safety Zone; Great Lakes Offshore Grand Prix, Lake Erie, Dunkirk, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of Dunkirk Harbor, Lake Erie, Dunkirk, NY. This safety zone is intended to restrict vessels from portions of Dunkirk Harbor during the Great Lakes Offshore Grand Prix. This temporary safety zone is necessary to protect mariners and vessels from the navigational hazards associated with this regatta. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Buffalo.

DATES: This rule is effective from 10:00 a.m. on August 18, 2018 until 5:00 p.m. on August 19, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0683 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 on this rule, call or email LTJG Sean Dolan, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9322, email *D09-SMB-SECBuffalo-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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 Information and Regulatory History

On March 22, 2018, Dunkirk Local Development Corporation and Dunkirk Festivals notified the Coast Guard that it will conducting a professional high speed powerboat race from 10:00 a.m. until 5:00 p.m. on August 19, 2018. In response, on July 23, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Great Lakes Offshore Grand Prix; Lake Erie, Dunkirk, NY'' (83 FR 34804, July 23, 2018). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this event. During the comment period that ended August 7, 2018, we received no comments.

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 would be contrary to the rule's objectives of ensuring safety of life on the navigable waters and protection of persons and vessels in the vicinity of the planned event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Buffalo (COTP) has determined the Great Lakes Offshore Grand Prix presents significant risks to the public safety and property. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the event takes place.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published July 23, 2018. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 10:00 a.m. until 5:00 p.m. on August 19, 2018, with a rain date of August 18, 2018. The safety zone will encompass all navigable waters of Lake Erie, Dunkirk, NY starting at position 42°29′37.7″ N, 079°21′17.7″ W then Northwest to 42°29′45.2″ N, 079°21′28.2″ W then Northeast to 42°30′15.0″ N, 079°21′20.0″ W then Northeast to 42°30′39.0″ N, 079°19′46.0″ W then Southeast to 42°30′09.3″ N, 079°19′03.1″ W. The duration of the zone is intended to enhance the safety of vessels and these navigable waters before, during, and after the scheduled 10:00 a.m. until 5:00 p.m. boat races.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

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 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the conclusion that this rule is not a significant regulatory action. Vessel traffic will be able to safely transit around this safety zone, which impacts a small designated area of Dunkirk Harbor. The event will also have built in times where vessels will be able to transit through the safety zone during breaks. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule will allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 00 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under 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 Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule establishes a temporary safety zone. It is categorically excluded from further review under paragraph L60 (a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration 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: 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.T09–0683 to read as follows:

§ 165.T09–0683 Safety Zone; Great Lakes Offshore Grand Prix; Lake Erie, Dunkirk, NY.

(a) *Location.* The safety zone will encompass all waters of Lake Erie, Dunkirk, NY starting at position 42° 29′37.7″ N, 079° 21′17.7″ W then Northwest to 42° 29′45.2″ N, 079° 21′28.2″ W then Northeast to 42° 30′15.0″ N, 079° 21′20.0″ W then Northeast to 42°30′39.0″ N, 079° 19′46.0″ W then Southeast to 42° 30′09.3″ N, 079° 19′03.1″ W.

(b) *Enforcement period.* This rule is effective from 10:00 a.m. until 5:00 p.m. on August 19, 2018 with a rain date of August 18, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: August 13, 2018.

Kenneth E. Blair,

Commander, U.S. Coast Guard, Acting Captain of the Port Buffalo.

[FR Doc. 2018–17697 Filed 8–15–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2018–0777]

RIN 1625–AA00

Safety Zone; Sandusky Bicentennial Fireworks, Sandusky Bay, Sandusky, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Sandusky Bay, in the vicinity of Sandusky, OH. This zone is intended to restrict vessels from portions of the Sandusky Bay for the Sandusky Bicentennial Fireworks. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port Detroit, or his designated representative. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This temporary final rule is effective from 8:10 p.m. through 9:35 p.m. on August 19th, 2018.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2018–0777. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email MST1 Ryan Erpelding, Waterways Department, Marine Safety Unit Toledo, Coast Guard; telephone (419) 418–6037, email *Ryan.G.Erpelding@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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 Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of this fireworks display in time to publish an NPRM. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

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.** Waiting for a 30-day effective period to run is impracticable and contrary to the public interest for the reasons discussed in the preceding paragraph.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Detroit (COTP) has determined that potential hazards associated with fireworks displays starting after 9:10 p.m. on August 19th, 2018 will be a safety concern for anyone within a 420 foot radius of the launch site. The likely combination of recreational vessels, darkness punctuated by bright flashes of light, and fireworks debris falling into the water presents risks of collisions, which could result in serious injuries or fatalities. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone that will be enforced from 8:10 p.m. through 9:35 p.m. on August 19, 2018. The safety zone will encompass all U.S. navigable waters of the Sandusky Bay within a 420 foot radius of the fireworks launch site located at position 41°27′53.31″ N, 082°42′15.85″ W with an alternate heavy wind location at position 41°27′55.24″ N, 082°42′17.86″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Detroit or his designated representative. The Captain of the Port, Sector Detroit or his designated representative may be contacted via VHF Channel 16.

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 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771

This regulatory action determination is based on the size, location, and duration of the safety zone. The majority of vessel traffic will be able to safely transit around the safety zone, which will impact only a portion of the Sandusky Bay in Sandusky, OH for a period of 85 minutes. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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. Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this temporary rule on small entities. While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism

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 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 determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 85 minutes that will prohibit entry within a 420 foot radius from where a fireworks display will be conducted. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration 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.T09–0777 to read as follows:

§ 165.T09–0777 Safety Zone; Sandusky Bicentennial Fireworks, Sandusky Bay, Sandusky, OH.

(a) *Location.* The following area is a temporary safety zone: All U.S. navigable waters of the Sandusky Bay within a 420 foot radius of the fireworks launch site located at position 41°27′53.31″ N, 082°42′15.85″ W with an alternate heavy wind location at 41°27′55.24″ N, 82°42′17.86″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Enforcement period.* This regulation will be enforced from 8:10

p.m. through 9:35 p.m. on August 19, 2018. The Captain of the Port Detroit, or a designated representative may suspend enforcement of the safety zone at any time.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated representative.

(3) The ''designated representative'' of the Captain of the Port Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Detroit to act on his behalf. The designated representative of the Captain of the Port Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port Detroit or his designated representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his designated representative to obtain permission to do so. The COTP or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit or his designated representative.

Dated: August 10, 2018.

Jeffrey W. Novak,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2018–17698 Filed 8–15–18; 8:45 am]

BILLING CODE 9110–04–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 552

[GSAR Change 89; GSAR Case 2016–G506; Docket No. 2016–0016; Sequence No.2]

RIN 3090–AJ75

General Services Administration Acquisition Regulation (GSAR); Federal Supply Schedule, Order-Level Materials; Technical Amendment

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is amending the General Services Administration Regulation (GSAR) to clarify the text regarding the application of the threshold for order-level materials (OLMs).

DATES: *Effective:* August 16, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Leah Price, GSA Acquisition Policy Division, Senior Policy Advisor, at *leah.price@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite GSAR Case 2016–G506.

SUPPLEMENTARY INFORMATION:

I. Background

GSAR Case 2016–G506; Federal Supply Schedule, Order-Level Materials, was published in the **Federal Register** at 83 FR 3275, on January 24, 2018. Since then, clarification is required regarding the application of the 33.33 percent threshold of order-level materials (OLMs) for task or delivery orders and orders against Federal Supply Schedule (FSS) BPAs awarded under FSS contracts at GSAR 552.238–82(d)(4).

II. Discussion of Changes

GSAR clause 552.238–82(d) Special Ordering Procedures for the Acquisition of Order-Level Materials prescribes procedures for including OLMs when placing an order against a Federal Supply Schedule (FSS) contract or FSS BPA. The procedures at d(4) of the clause require that the value of OLMs in an order awarded under a FSS contract or FSS BPA shall not exceed 33.33 percent of the total value of the order. The text at d(4) of the clause is being amended to clarify the applicability of the 33.33 percent threshold on OLMs placed in a task or delivery order or the cumulative value of OLMs in orders against an FSS BPA awarded under a FSS contract. There are no significant content changes resulting from this technical amendment.

III. Public Comments Not Required

41 U.S.C. 1707, Publication of proposed regulations, applies to the publication of the General Services Administration Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including amendment or modification thereof) must be published for public comment if it has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because it contains minor editorial updates without changing the meaning of content. The changes do not have a significant impact on the public.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives; and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this editorial change does not have a significant impact on the public or Government.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant GSAR revision and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 552

Government procurement.

Dated: August 10, 2018.

Jeffrey A. Koses,

Senior Procurement Executive, General Services Administration.

Therefore, GSA amends 48 CFR part 552 as set forth below:

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 2. Amend section 552.238–82 by revising paragraph (d)(4) to read as follows:

552.238–82 Special Ordering Procedures for the Acquisition of Order-Level Materials.

* * * * *

(d) * * *

(4) The value of order-level materials in a task or delivery order, or the cumulative value of order-level materials in orders against an FSS BPA awarded under a FSS contract shall not exceed 33.33 percent.

* * * * *

[FR Doc. 2018–17639 Filed 8–15–18; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170828822–70999–02]

RIN 0648–XG392

Fisheries of the Northeastern United States; Summer Flounder Fishery; 2018 Commercial Quota Harvested for the Commonwealth of Massachusetts

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the 2018 summer flounder commercial quota allocated to the Commonwealth of Massachusetts has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Massachusetts for the remainder of calendar year 2018, unless additional quota becomes available through a transfer from another state. Regulations governing the summer flounder fishery require publication of this notification to advise Massachusetts that the quota has been harvested, and to advise vessel and dealer permit holders that no Federal commercial quota is available to land summer flounder in Massachusetts.

DATES: Effective 0001 hours local time, August 14, 2018, through December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Cynthia Hanson, (978) 281–9180, or *Cynthia.Hanson@noaa.gov.*

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102.

The overall commercial quota for summer flounder in the 2018 fishing year is 6,436,120 lb (2,919,375 kg) (83 FR 4165, January 30, 2018). The percent allocated to vessels landing summer flounder in Massachusetts is 6.82046 percent, resulting in an initial state commercial quota of 438,973 lb (199,115 kg). However, Massachusetts' initial 2018 commercial quota was reduced to 404,742 lb (183,588 kg) due to a 2017 quota overage of 34,231 lb (15,527 kg). Massachusetts has received one quota transfer of 5,450 lb (2,472 kg) from North Carolina on March 9, 2018 (83 FR 11146), bringing its commercial quota to 410,192 lb (186,060 kg).

The NMFS Administrator for the Greater Atlantic Region (Regional Administrator), monitors the state commercial landings and determines when a state's commercial quota has been harvested. NMFS is required to publish notification in the **Federal Register** advising and notifying Federally permitted commercial vessels and dealers that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the 2018 Massachusetts commercial summer flounder quota will be harvested by August 14, 2018.

Section 648.4(b) provides that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours local time, August 14, 2018, landings of summer flounder in Massachusetts by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2018 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours local time, August 14, 2018, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Massachusetts for the remainder of the calendar year, or until additional quota becomes available through a transfer from another state.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action closes the commercial summer flounder fishery for Massachusetts until January 1, 2019, under current regulations. The regulations at § 648.103(b) require such action to ensure that summer flounder vessels do not exceed quotas allocated to the states. If implementation of this closure was delayed to solicit prior public comment, the quota for this fishing year will be exceeded, thereby undermining the conservation objectives of the Summer Flounder Fishery Management Plan. The Assistant Administrator further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reason stated above.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 10, 2018.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–17620 Filed 8–13–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 159
Thursday, August 16, 2018

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2017–0024]

RIN 3150–AJ93

Approval of American Society of Mechanical Engineers' Code Cases

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to incorporate by reference proposed revisions of three regulatory guides (RGs), which would approve new, revised, and reaffirmed Code Cases published by the American Society of Mechanical Engineers (ASME). This proposed action would allow nuclear power plant licensees, and applicants for construction permits, operating licenses, combined licenses, standard design certifications, standard design approvals and manufacturing licenses, to use the Code Cases listed in these draft RGs as voluntary alternatives to engineering standards for the construction, inservice inspection (ISI), and inservice testing (IST) of nuclear power plant components. The NRC is requesting comments on this proposed rule and on the draft versions of the three RGs proposed to be incorporated by reference. The NRC is also making available a related draft RG that lists Code Cases that the NRC has not approved for use. This draft RG will not be incorporated by reference into the NRC's regulations.

DATES: Submit comments on the proposed rule and related guidance by October 30, 2018. Submit comments specific to the information collections aspects of this rule by September 17, 2018. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only of comments received on or before this date.

ADDRESSES: You may submit comments on the proposed rule and related guidance by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0024. 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.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

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: Margaret Ellenson, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–0894, email: *Margaret.Ellenson@nrc.gov*; and Giovanni Facco, Office of Nuclear Regulatory Research, telephone: 301–415–6337; email: *Giovanni.Facco@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Executive Summary

A. Need for the Regulatory Action

The purpose of this regulatory action is to incorporate by reference into the NRC's regulations the latest revisions of three RGs (currently in draft form for comment). The three draft RGs identify new, revised, and reaffirmed Code Cases published by the ASME, which the NRC has determined are acceptable for use as voluntary alternatives to compliance with certain provisions of the ASME *Boiler and Pressure Vessel Code* (BPV Code) and ASME *Code for Operation and Maintenance of Nuclear Power Plants* (OM Code) currently incorporated by reference into the NRC's regulations.

B. Major Provisions

The three draft RGs that the NRC proposes to incorporate by reference are RG 1.84, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,'' Revision 38 (Draft Regulatory Guide (DG)–1345); RG 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' Revision 19 (DG–1342); and RG 1.192, ''Operation and Maintenance [OM] Code Case Acceptability, ASME OM Code,'' Revision 3 (DG–1343). This proposed action would allow nuclear power plant licensees and applicants for construction permits (CPs), operating licenses (OLs), combined licenses (COLs), standard design certifications, standard design approvals, and manufacturing licenses, to use the Code Cases newly listed in these revised RGs as voluntary alternatives to engineering standards for the construction, ISI, and IST of nuclear power plant components. The NRC also notes the availability of a proposed version of RG 1.193, ''ASME Code Cases Not Approved for Use,'' Revision 6 (DG–1344). This document lists Code Cases that the NRC has not approved for generic use, and will not be incorporated by reference into the NRC's regulations. The NRC is not requesting comment on DG–1344.

The NRC prepared a draft regulatory analysis to determine the expected quantitative costs and benefits of this proposed rule, as well as qualitative factors to be considered in the NRC's rulemaking decision. The analysis concluded that this proposed rule would result in net savings to the industry and the NRC. As shown below, the estimated total net benefit relative to the regulatory baseline, the quantitative benefits outweigh the costs by a range from approximately $6.72 million (7-percent net present value (NPV)) to $7.48 million (3-percent NPV).

TOTAL AVERTED COSTS (COSTS)

Attribute	Undiscounted	7% NPV	3% NPV
Industry Implementation	$0	$0	$0
Industry Operation	6,130,000	5,200,000	5,700,000
Total Industry Costs	6,130,000	5,200,000	5,700,000
NRC Implementation	(360,000)	(360,000)	(360,000)
NRC Operation	2,380,000	1,880,000	2,140,000
Total NRC Cost	2,020,000	1,520,000	1,780,000
Net	8,150,000	6,720,000	7,480,000

The regulatory analysis also considered the following qualitative considerations: (1) Flexibility and decreased uncertainty for licensees when making modifications or preparing to perform ISI or IST; (2) consistency with the provisions of the National Technology Transfer and Advancement Act of 1995 (NTTAA), which encourages Federal regulatory agencies to consider adopting voluntary consensus standards as an alternative to *de novo* agency development of standards affecting an industry; (3) consistency with the NRC's policy of evaluating the latest versions of consensus standards in terms of their suitability for endorsement by regulations and regulatory guides; and (4) consistency with the NRC's goal to harmonize with international standards to improve regulatory efficiency for both the NRC and international standards groups.

The draft regulatory analysis concludes that this proposed rule should be adopted because it is justified when integrating the cost-beneficial quantitative results and the positive and supporting nonquantitative considerations in the decision. For more information, please see the regulatory analysis (ADAMS Accession No. ML18099A054).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0024 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0024.
- *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, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2017–0024 in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

The ASME develops and publishes the ASME BPV Code, which contains requirements for the design, construction, and ISI examination of nuclear power plant components, and the ASME OM Code,[1] which contains requirements for IST of nuclear power plant components. In response to BPV and OM Code user requests, the ASME develops Code Cases that provide voluntary alternatives to BPV and OM Code requirements under special circumstances.

The NRC approves the ASME BPV and OM Codes in § 50.55a, ''Codes and standards,'' of title 10 of the *Code of Federal Regulations* (10 CFR) through the process of incorporation by reference. As such, each provision of the ASME Codes incorporated by reference into, and mandated by § 50.55a constitutes a legally-binding NRC requirement imposed by rule. As noted previously, ASME Code Cases, for the most part, represent alternative

[1] The editions and addenda of the ASME Code for Operation and Maintenance of Nuclear Power Plants have had different titles from 2005 to 2017, and are referred to collectively in this rule as the ''OM Code.''

approaches for complying with provisions of the ASME BPV and OM Codes. Accordingly, the NRC periodically amends § 50.55a to incorporate by reference the NRC's RGs listing approved ASME Code Cases that may be used as voluntary alternatives to the BPV and OM Codes.[2]

This proposed rule is the latest in a series of rules that incorporate by reference new versions of several RGs identifying new, revised, and reaffirmed,[3] and unconditionally or conditionally acceptable ASME Code Cases that the NRC approves for use. In developing these RGs, the NRC staff reviews ASME BPV and OM Code Cases, determines the acceptability of each Code Case, and publishes its findings in the RGs. The RGs are revised periodically as new Code Cases are published by the ASME. The NRC incorporates by reference the RGs listing acceptable and conditionally acceptable ASME Code Cases into § 50.55a. The NRC published a final rule dated January 17, 2018 (83 FR 2331) that incorporated by reference into § 50.55a the most recent versions of the RGs, which are: RG 1.84, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,'' Revision 37; RG 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' Revision 18; and RG 1.192, ''Operation and Maintenance Code Case Acceptability, ASME OM Code,'' Revision 2.

III. Discussion

This proposed rule would incorporate by reference the latest revisions of the NRC's RGs that list ASME BPV and OM Code Cases that the NRC finds to be acceptable, or acceptable with NRC-specified conditions (''conditionally acceptable''). Regulatory Guide 1.84, Revision 38, DG–1345, would supersede the incorporation by reference of Revision 37; RG 1.147, Revision 19, DG–1342, would supersede the incorporation by reference of Revision 18; and RG 1.192, Revision 3, DG–1343, would supersede the incorporation by reference of Revision 2.

[2] See **Federal Register** notice (FRN), ''Incorporation by Reference of ASME BPV and OM Code Cases'' (68 FR 40469; July 8, 2003).

[3] Code Cases are categorized by ASME as one of three types: New, revised, or reaffirmed. A new Code Case provides for a new alternative to specific ASME Code provisions or addresses a new need. The ASME defines a revised Code Case to be a revision (modification) to an existing Code Case to address, for example, technological advancements in examination techniques or to address NRC conditions imposed in one of the RGs that have been incorporated by reference into § 50.55a. The ASME defines ''reaffirmed'' as an OM Code Case that does not have any change to technical content, but includes editorial changes.

The ASME Code Cases that are the subject of this proposed rule are the new and revised Section III and Section XI Code Cases as listed in Supplement 11 to the 2010 BPV Code through Supplement 7 to the 2013 BPV Code, and the OM Code Cases published at the same time as the 2017 Edition. Additional Section XI Code Cases published from the 2015 Edition of the BPV Code are also included at the request of the ASME.

The latest editions and addenda of the ASME BPV and OM Codes that the NRC has approved for use are referenced in § 50.55a. The ASME also publishes Code Cases that provide alternatives to existing Code requirements that the ASME developed and approved. This proposed rule would incorporate by reference RGs 1.84, 1.147, and 1.192 allowing nuclear power plant licensees, and applicants for combined licenses, standard design certifications, standard design approvals, and manufacturing licenses under the regulations that govern license certifications, to use the Code Cases listed in these RGs as suitable alternatives to the ASME BPV and OM Codes for the construction, ISI, and IST of nuclear power plant components. The ASME publishes Code Cases in a separate document but at the same time as specific editions of the ASME OM Code. The ASME also publishes BPV Code Cases in a separate document and at a different time than ASME BPV Code Editions. This proposed rule identifies Code Cases by the edition of the ASME BPV Code or ASME OM Code under which they were published by ASME. This proposed rule only accepts Code Cases for use in lieu of the specific editions and addenda of the ASME BPV and OM Codes incorporated by reference in § 50.55a.

The following general guidance applies to the use of the ASME Code Cases approved in the latest versions of the RGs that are incorporated by reference into § 50.55a as part of this proposed rule. Specifically, the use of the Code Cases listed in RGs 1.84, 1.147, and 1.192 are acceptable with the specified conditions when implementing the editions and addenda of the ASME BPV and OM Codes incorporated by reference in 10 CFR 50.55a.

The approval of a Code Case in the NRC's RGs constitutes acceptance of its technical position for applications that are not precluded by regulatory or other requirements or by the recommendations in these or other RGs. The applicant and/or licensee is responsible for ensuring that use of the Code Case does not conflict with regulatory requirements or licensee commitments. The Code Cases listed in the RGs are acceptable for use within the limits specified in the Code Cases. If the RG states an NRC condition on the use of a Code Case, then the NRC condition supplements and does not supersede any condition(s) specified in the Code Case, unless otherwise stated in the NRC condition.

The ASME Code Cases may be revised for many reasons (*e.g.,* to incorporate operational examination and testing experience and to update material requirements based on research results). On occasion, an inaccuracy in an equation is discovered or an examination, as practiced, is found not to be adequate to detect a newly discovered degradation mechanism.

Therefore, when an applicant or a licensee initially implements a Code Case, § 50.55a requires that the applicant or the licensee implement the most recent version of that Code Case, as listed in the RGs incorporated by reference. Code Cases superseded by revision are no longer acceptable for new applications unless otherwise indicated.

Section III of the ASME BPV Code applies only to new construction (*i.e.,* the edition and addenda to be used in the construction of a plant are selected based on the date of the construction permit and are not changed thereafter, except voluntarily by the applicant or the licensee). Hence, if a Section III Code Case is implemented by an applicant or a licensee and a later version of the Code Case is incorporated by reference into § 50.55a and listed in the RG, the applicant or the licensee may use either version of the Code Case (subject, however, to whatever change requirements apply to its licensing basis (*e.g.,* § 50.59)) until the next mandatory ISI or IST update.

A licensee's ISI and IST programs must be updated every 10 years to the latest edition and addenda of ASME BPV Code, Section XI, and the OM Code, respectively, that were incorporated by reference into § 50.55a and in effect 12 months prior to the start of the next inspection and testing interval. Licensees that were using a Code Case prior to the effective date of its revision may continue to use the previous version for the remainder of the 120-month ISI or IST interval. This relieves licensees of the burden of having to update their ISI or IST program each time a Code Case is revised by the ASME and approved for use by the NRC. Code Cases apply to specific editions and addenda, and Code Cases may be revised if they are no longer accurate or adequate, so licensees choosing to continue using a Code Case during the subsequent ISI or IST interval must implement the latest version incorporated by reference into § 50.55a and listed in the RGs.

The ASME may annul Code Cases that are no longer required, are determined to be inaccurate or inadequate, or have been incorporated into the BPV or OM Codes. A Code Case may be revised, for example, to incorporate user experience. The older or superseded version of the Code Case cannot be applied by the licensee or applicant for the first time.

If an applicant or a licensee applied a Code Case before it was listed as superseded, the applicant or the licensee may continue to use the Code Case until the applicant or the licensee updates its construction Code of Record (in the case of an applicant, updates its application) or until the licensee's 120-month ISI or IST update interval expires, after which the continued use of the Code Case is prohibited unless NRC authorization is given under § 50.55a(z). If a Code Case is incorporated by reference into § 50.55a and later a revised version is issued by the ASME because experience has shown that the design analysis, construction method, examination method, or testing method is inadequate; the NRC will amend § 50.55a and the relevant RG to remove the approval of the superseded Code Case. Applicants and licensees should not begin to implement such superseded Code Cases in advance of the rulemaking.

A. Code Cases Proposed To Be Approved for Unconditional Use

The Code Cases discussed in Table I are new, revised or reaffirmed Code Cases in which the NRC is not proposing any conditions. The table identifies the draft regulatory guide listing the applicable Code Case that the NRC proposes to approve for use.

TABLE I

Code case No.	Published with supplement	Title
Boiler and Pressure Vessel Code Section III (addressed in DG–1345, Table 1)		
N–60–6	11 (2010 Edition)	Material for Core Support Structures, Section III, Division 1.
N–249–15	7 (2013 Edition)	Additional Materials for Subsection NF, Classes 1, 2, 3, and MC Supports Fabricated Without Welding, Section III, Division 1.
N–284–4	11 (2010 Edition)	Metal Containment Shell Buckling Design Methods, Class MC, TC, and SC Construction Section III, Divisions 1 and 3.
N–520–6	1 (2013 Edition)	Alternative Rules for Renewal of Active or Expired N-type Certificates for Plants Not in Active Construction, Section III, Division 1.
N–801–1	11 (2010 Edition)	Rules for Repair of N-Stamped Class 1, 2, and 3 Components Section III, Division 1.
N–822–2	7 (2013 Edition)	Application of the ASME Certification Mark Section III, Divisions 1, 2, 3, and 5.
N–833	1 (2013 Edition)	Minimum Non-prestressed Reinforcement in the Containment Base Mat or Slab Required for Concrete Crack Control, Section III, Division 2.
N–834	3 (2013 Edition)	ASTM A988/A988M–11 UNS S31603, Subsection NB, Class 1 Components, Section III, Division 1.
N–836	3 (2013 Edition)	Heat Exchanger Tube Mechanical Plugging, Class 1, Section III, Division 1.
N–841	4 (2013 Edition)	Exemptions to Mandatory Post Weld Heat Treatment (PWHT) of SA–738 Grade B for Class MC Applications, Section III, Division 1.
N–844	5 (2013 Edition)	Alternatives to the Requirements of NB–4250(c), Section III, Division 1.
Boiler and Pressure Vessel Code Section XI (addressed in DG–1342, Table 1)		
N–513–4	6 (2013 Edition)	Evaluation of Criteria for Temporary Acceptance of Flaws in Moderate Energy Class 2 or 3 Piping, Section XI, Division 1.
N–528–1	5 (1998 Edition)	Purchase, Exchange, or Transfer of Material Between Nuclear Plant Sites Section XI, Division 1.
N–661–3	6 (2015 Edition)	Alternative Requirements for Wall Thickness Restoration of Class 2 and 3 Carbon Steel Piping for Raw Water Service, Section XI, Division 1.
N–762–1	3 (2013 Edition)	Temper Bead Procedure Qualification Requirements for Repair/Replacement Activities without Postweld Heat Treatment, Section XI, Division 1.
N–789–2	5 (2015 Edition)	Alternative Requirements for Pad Reinforcement of Class 2 and 3 Moderate Energy Carbon Steel Piping for Raw Water Service, Section XI, Division 1.
N–823–1	4 (2013 Edition)	Visual Examination Section XI, Division 1.
N–839	7 (2013 Edition)	Similar and Dissimilar Metal Welding Using Ambient Temperature SMAW [1] Temper Bead Technique Section XI, Division 1.
N–842	4 (2013 Edition)	Alternative Inspection Program for Longer Fuel Cycles Section XI, Division 1.
N–853	6 (2015 Edition)	PWR [2] Class 1 Primary Piping Alloy 600 Full Penetration Branch Connection Weld Metal Buildup for Material Susceptible to Primary Water Stress Corrosion Cracking, Section XI, Division 1.
N–854	1 (2015 Edition)	Alternative Pressure Testing Requirements for Class 2 and 3 Components Connected to the Class 1 Boundary, Section XI, Division 1.
OM Code (addressed in DG–1343, Table 1)		
OMN–16 Revision 2	2017 Edition	Use of a Pump Curve for Testing.
OMN–21	2017 Edition	Alternative Requirements for Adjusting Hydraulic Parameters to Specified Reference Points.

[1] Shielded metal arc welding.
[2] Pressurized water reactor.

B. Code Cases Approved for Use With Conditions

The NRC has determined that certain Code Cases, as issued by the ASME, are generally acceptable for use, but that the alternative requirements specified in those Code Cases must be supplemented in order to provide an acceptable level of quality and safety. Accordingly, the NRC proposes to impose conditions on the use of these Code Cases to modify, limit or clarify their requirements. The conditions would specify, for each applicable Code Case, the additional activities that must be performed, the limits on the activities specified in the Code Case, and/or the supplemental information needed to provide clarity. These ASME Code Cases, listed in Table II, are included in Table 2 of DG–1345 (RG 1.84), DG–1342 (RG 1.147), and DG–1343 (RG 1.192). The NRC's evaluation of the Code Cases and the reasons for the NRC's proposed conditions are discussed in the following paragraphs. Notations have been made to indicate the conditions duplicated from previous versions of the RG.

The NRC requests public comment on these Code Cases and the proposed conditions. It should also be noted that the following paragraphs only address those Code Cases for which the NRC proposes to impose condition(s), which are listed in the RG for the first time.

TABLE II

Code case No.	Published with supplement	Title
Boiler and Pressure Vessel Code Section III (addressed in DG–1345, Table 2)		
N–71–19	0 (2013 Edition)	Additional Materials for Subsection NF, Class 1, 2, 3, and MC Supports Fabricated by Welding, Section III, Division 1.
Boiler and Pressure Vessel Code Section XI (addressed in DG–1342, Table 2)		
N–516–4	7 (2013 Edition)	Underwater Welding, Section XI, Division 1.
N–597–3	5 (2013 Edition)	Evaluation of Pipe Wall Thinning, Section XI, Division 1.
N–606–2	2 (2013 Edition)	Similar and Dissimilar Metal Welding Using Ambient Temperature Machine GTAW [1] Temper Bead Technique for BWR [2] CRD [3] Housing/Stub Tube Repairs, Section XI, Division 1.
N–638–7	2 (2013 Edition)	Similar and Dissimilar Metal Welding Using Ambient Temperature Machine GTAW Temper Bead Technique, Section XI, Division 1.
N–648–2	7 (2013 Edition)	Alternative Requirements for Inner Radius Examinations of Class 1 Reactor Vessel Nozzles, Section XI, Division 1.
N–695–1	0 (15 Edition)	Qualification Requirements for Dissimilar Metal Piping Welds Section XI, Division 1.
N–696–1	6 (2013 Edition)	Qualification Requirements for Mandatory Appendix VIII Piping Examination Conducted from the Inside Surface, Section XI, Division 1.
N–702	12 (2001 Edition)	Alternative Requirements for Boiling Water Reactor (BWR) Nozzle Inner Radius and Nozzle-to-Shell Welds, Section XI, Division 1.
N–705 (Errata)	11 (2010 Edition)	Evaluation Criteria for Temporary Acceptance of Degradation in Moderate Energy Class 2 or 3 Vessels and Tanks, Section XI, Division 1.
N–711–1	0 (2017 Edition)	Alternative Examination Coverage Requirements for Examination Category B–F, B–J, C–F–1, C–F–2, and R-A Piping Welds, Section XI, Division 1.
N–754–1	1 (2013 Edition)	Optimized Structural Dissimilar Metal Weld Overlay for Mitigation of PWR Class 1 Items, Section XI, Division 1.
N–766–1	1 (2013 Edition)	Nickel Alloy Reactor Coolant Inlay and Onlay for Mitigation of PWR Full Penetration Circumferential Nickel Alloy Dissimilar Metal Welds in Class 1 Items, Section XI, Division 1.
N–824	11 (2010 Edition)	Ultrasonic Examination of Cast Austenitic Piping Welds From the Outside Surface Section XI, Division 1.
N–829	0 (2013 Edition)	Austenitic Stainless Steel Cladding and Nickel Base Cladding Using Ambient Temperature Machine GTAW Temper Bead Technique, Section XI, Division 1.
N–830	7 (2013 Edition)	Direct Use of Master Fracture Toughness Curve for Pressure-Retaining Materials of Class 1 Vessels, Section XI, Division 1.
N–831	0 (2017 Edition)	Ultrasonic Examination in Lieu of Radiography for Welds in Ferritic Pipe, Section XI, Division 1.
N–838	2 (2015 Edition)	Flaw Tolerance Evaluation of Cast Austenitic Stainless Steel Piping, Section XI, Division 1.
N–843	4 (2013 Edition)	Alternative Pressure Testing Requirements Following Repairs or Replacements for Class 1 Piping between the First and Second Injection Isolation Valves, Section XI, Division 1.
N–849	7 (2013 Edition)	In situ VT–3 Examination of Removable Core Support Structures Without Removal, Section XI, Division 1.
OM Code (addressed in DG–1343, Table 2)		
OMN–1 Revision 2	2017 Edition	Alternative Rules for Preservice and Inservice Testing of Active Electric Motor.
OMN–3	2017 Edition	Requirements for Safety Significance Categorization of Components Using Risk Insights for Inservice Testing of LWR [4] Power Plants.

TABLE II—Continued

Code case No.	Published with supplement	Title
OMN–4	2017 Edition	Requirements for Risk Insights for Inservice Testing of Check Valves at LWR Power Plants.
OMN–9	2017 Edition	Use of a Pump Curve for Testing.
OMN–12	2017 Edition	Alternative Requirements for Inservice Testing Using Risk Insights for Pneumatically and Hydraulically Operated Valve Assemblies in Light-Water Reactor Power Plants (OM-Code 1998, Subsection ISTC).
OMN–18	2017 Edition	Alternate Testing Requirements for Pumps Tested Quarterly Within ±20% of Design Flow.
OMN–19	2017 Edition	Alternative Upper Limit for the Comprehensive Pump Test.
OMN–20	2017 Edition	Inservice Test Frequency.

[1] Gas tungsten arc welding.
[2] Boiling water reactor.
[3] Control rod drive.
[4] Light water reactor.

1. ASME BPV Code, Section III Code Cases (DG–1345/RG 1.84)

Code Case N–71–19 [Supplement 0, 2013 Edition]

Type: Revised.

Title: Additional Materials for Subsection NF, Class 1, 2, 3, and MC Supports Fabricated by Welding.

The first condition on Code Case N–71–19 is identical to the first condition on Code Case N–71–18 that was first approved by the NRC in Revision 33 of RG 1.84 in August 2005. The condition stated that, ''The maximum measured ultimate tensile strength (UTS) of the component support material must not exceed 170 ksi in view of the susceptibility of high strength materials to brittleness and stress corrosion cracking.'' When ASME revised N–71, the code case was not modified in a way that would make it possible for the NRC to remove the first condition. Therefore, the first condition would be retained in Revision 38 of RG 1.84.

The second condition on Code Case N–71–18 was removed because it related to materials of up to 190 ksi and the first condition has a UTS limit of 170 ksi on materials. The staff is not aware of any materials listed in this Code Case to which this condition would apply so it was deleted and the subsequent conditions renumbered.

The second condition on Code Case N–71–19 is an update to the third condition on Revision 18 of the Code Case. This condition has been modified so that it references the correct sentence and paragraph of the revised Code Case and now refers to paragraph 5.2 of the Code Case, instead of paragraph 5.5 to reference ''5.3.2.3, 'Alternative Atmosphere Exposure Time Periods Established by Test,' of the AWS [American Welding Society] D1.1 Code for the evidence presented to and accepted by the Authorized Inspector concerning exposure of electrodes for a longer period of time.'' The basis for this change is that the paragraph of the Code Case identified by this condition has been renumbered and is now 5.2. When ASME revised N–71, the code case was not modified in a way that would make it possible for the NRC to remove the second condition. Therefore, the second condition would be retained in Revision 38 of RG 1.84.

The third condition on Code Case N–71–19 is substantively the same as the fourth condition on Code Case N–71–18 that was first approved by the NRC in Revision 33 of RG 1.84 in August 2005, except that it now references the renumbered paragraphs of the revised Code Case. The condition now reads ''Paragraph 16.2.2 of Code Case N–71–19 is not acceptable as written and must be replaced with the following: 'When not exempted by 16.2.1 above, the post weld heat treatment must be performed in accordance with NF–4622 except that ASTM A–710 Grade A Material must be at least 1000 °F (540 °C) and must not exceed 1150 °F (620 °C) for Class 1 and 2 material and 1175 °F (640 °C) for Class 3 material.' '' When ASME revised N–71, the code case was not modified in a way that would make it possible for the NRC to remove the third condition. Therefore, the third condition would be retained in Revision 38 of RG 1.84.

The fourth condition on Code Case N–71–19 is identical to the fifth condition on Code Case N–71–18 that was first approved by the NRC in Revision 33 of RG 1.84 in August 2005. The condition stated that, ''The new holding time-at-temperature for weld thickness (nominal) must be 30 minutes for welds ½ inch or less in thickness, 1 hour per inch of thickness for welds over ½ inch to 5 inches, and for thicknesses over 5 inches, 5 hours plus 15 minutes for each additional inch over 5 inches.'' When ASME revised N–71, the code case was not modified in a way that would make it possible for the NRC to remove the fourth condition. Therefore, the fourth condition would be retained in Revision 38 of RG 1.84.

The fifth condition on Code Case N–71–19 is identical to the sixth condition on Code Case N–71–18 that was first approved by the NRC in Revision 33 of RG 1.84 in August 2005. The condition stated that, ''The fracture toughness requirements as listed in this Code Case apply only to piping supports and not to Class 1, 2 and 3 component supports.'' When ASME revised N–71, the code case was not modified in a way that would make it possible for the NRC to remove the fifth condition. Therefore, the fifth condition would be retained in Revision 38 of RG 1.84.

The sixth condition is a new condition, which states that when welding P-Number materials listed in the Code Case, the corresponding S-Number welding requirements shall apply. Previous revisions of the Code Case assigned every material listed in the Code Case an S-Number designation. Welding requirements for materials in the Code Case are specified based on the S-Number. The current version of the Code Case was modified to assign corresponding P-Numbers to those Code Case materials, which are also listed in ASME Code Section IX and have a P-Number designation. However, the Code Case was not modified to make clear that the Code Case requirements for welding S-Number materials are also applicable to the P-Number materials, all of which were previously listed with S-Numbers. Therefore, as written, if a user applies this Code Case and uses a P-Number material listed in the tables, it is not clear that the corresponding S-Number welding requirments apply. To clarify the application of S-Number welding requirements to P-Number materials, the NRC proposes the sixth condition as stated. This new condition would not impose any additional restrictions on the use of this Code Case from those placed on the previous revisions.

2. ASME BPV Code, Section XI Code Cases (DG–1342/RG 1.147)

Code Case N–516–4 [Supplement 7, 2013 Edition]

Type: Revised.
Title: Underwater Welding, Section XI, Division 1.

The previously approved revision of this Code Case, N–516–3, was conditionally accepted in RG 1.147 to require that licensees obtain NRC approval in accordance with § 50.55a(z) regarding the technique to be used in the weld repair or replacement of irradiated material underwater. The rationale for this condition was that it was known that materials subjected to high neutron fluence could not be welded without cracking (this is discussed in more detail in the next paragraph). However, the condition applied to Code Case N–516–3 did not provide any guidance on what level of neutron irradiation could be considered a threshold for weldability.

The technical basis for imposing conditions on the welding of irradiated materials is that neutrons can generate helium atoms within the metal lattice through transmutation of various isotopes of boron and/or nickel. At high temperatures, such as those during welding, these helium atoms rapidly diffuse though the metal lattice, forming helium bubbles. In sufficient concentration, these helium atoms can cause grain boundary cracking that occurs in the fusion zones and heat affected zones during the heatup/cooldown cycle.

In the rulemaking for the 2009–2013 Editions of the ASME Code, the NRC adopted conditions that should be applied to Section XI, Article IWA–4660 when performing underwater welding on irradiated materials. These conditions provide guidance on what level of neutron irradiation and/or helium content would require approval by the NRC because of the impact of neutron fluence on weldability. These conditions provide separate criteria for three generic classes of material: ferritic material, austenitic material other than P-No. 8 (*e.g.,* nickel based alloys) and austenitic P-No. 8 material (*e.g.,* stainless steel alloys). These conditions are currently located in § 50.55a(b)(2)(xii). Although these conditions apply to underwater welding performed in accordance with IWA–4660, they do not apply to underwater welding performed in accordance with Code Case N–516–4.

Therefore, the NRC proposes to approve Code Case N–516–4 with the following conditions for underwater welding. The first condition captures the § 50.55a(b)(2)(xii) requirement for underwater welding of ferritic materials, and states that licensees must obtain NRC approval in accordance with § 50.55a(z) regarding the welding technique to be used prior to performing welding on ferritic material exposed to fast neutron fluence greater than 1×10^{17} n/cm^2 (E > 1 MeV). The second condition captures the § 50.55a(b)(2)(xii) requirement for underwater welding of austenitic material other than P-No. 8, and states that licensees must obtain NRC approval in accordance with § 50.55a(z) regarding the welding technique to be used prior to performing welding on austenitic material other than P-No. 8, exposed to thermal neutron fluence greater than 1×10^{17} n/cm^2 (E < 0.5 eV). The third condition captures the § 50.55a(b)(2)(xii) requirement for underwater welding of austenitic P-No. 8 material, and states that licensees must obtain NRC approval in accordance with § 50.55a(z) regarding the welding technique to be used prior to performing welding on austenitic P-No. 8 material exposed to thermal neutron fluence greater than 1×10^{17} n/cm^2 (E < 0.5 eV) and measured or calculated helium concentration of the material greater than 0.1 atomic parts per million.

Code Case N–597–3 [Supplement 5, 2013 Edition]

Type: Revised.
Title: Evaluation of Pipe Wall Thinning Section XI.

The NRC revised the conditions to clarify their intent. The conditions on N–597–3 are all carryovers from the previous version of this Code Case N–597–2. The first condition on Code Case N–597–3 addresses the NRC's concerns regarding how the corrosion rate and associated uncertainties will be determined when N–597–3 is applied to evaluate the wall thinning in pipes for degradation mechanisms other than flow accelerated corrosion. Therefore, the NRC is proposing a condition that requires the corrosion rate be reviewed and approved by the NRC prior to the use of the Code Case.

The second condition on Code Case N–597–3 has two parts that allow the use of this Code Case to mitigate flow accelerated corrosion, but only if both of the requirements of the condition are met. Due to the difficulty inherent in calculating wall thinning, the first part of Condition 2 requires that the use of N–597–3 on flow-accelerated corrosion piping must be supplemented by the provisions of Electric Power Research Institute (EPRI) Nuclear Safety Analysis Center Report 202L– 2, ''Recommendations for an Effective Flow Accelerated Corrosion Program,'' April 1999, which contain rigorous provisions to minimize wall thinning.

The first part of Condition 2 (*i.e.,* (2)(a)) on Code Case N–597–3 is identical to the first condition on Code Case N–597–2 that was first approved by the NRC in Revision 15 of RG 1.147 in October 2007. The condition stated that the ''Code Case must be supplemented by the provisions of EPRI Nuclear Safety Analysis Center Report (NSAC) 202L- 2, ''Recommendations for an Effective Flow Accelerated Corrosion Program'' (Ref. 6), April 1999, for developing the inspection requirements, the method of predicting the rate of wall thickness loss, and the value of the predicted remaining wall thickness. As used in NSAC–202L–R2, the term ''should'' is to be applied as ''shall'' (*i.e.,* a requirement).'' When ASME revised N–597, the code case was not modified in a way that would make it possible for the NRC to remove the first part of Condition 2. Therefore, the first part of Condition 2 would be retained in Revision 19 of RG 1.147.

The second part of Condition 2 (*i.e.,* (2)(b)) on Code Case N–597–3 is identical to the second condition on Code Case N–597–2 that was first approved by the NRC in Revision 15 of RG 1.147 in October 2007. The condition stated that ''Components affected by flow-accelerated corrosion to which this Code Case are applied must be repaired or replaced in accordance with the construction code of record and owner's requirements or a later NRC approved edition of Section III, 'Rules for Construction of Nuclear Power Plant Components,' of the ASME Code prior to the value of t_p reaching the allowable minimum wall thickness, t_{min}, as specified in –3622.1(a)(1) of this Code Case. Alternatively, use of the Code Case is subject to NRC review and approval per § 50.55a(z).'' When ASME revised N–597, the code case was not modified in a way that would make it possible for the NRC to remove the second part of Condition 2. Therefore, the second part of Condition 2 would be retained in Revision 19 of RG 1.147.

The third condition on Code Case N–597–3 is identical to the fourth condition on Code Case N–597–2 that was first approved by the NRC in Revision 15 of RG 1.147 in October 2007. The condition stated that for those components that do not require immediate repair or replacement, the rate of wall thickness loss is to be used to determine a suitable inspection frequency, so that repair or replacement occurs prior to reaching allowable minimum wall thickness. When ASME revised N–597, the code case was not modified in a way that would make it possible for the NRC to remove the third condition. Therefore, the third condition would be retained in Revision 19 of RG 1.147.

The fourth condition on Code Case N–597–3 is updated from the sixth condition on Code Case N–597–2 that was first approved by the NRC in Revision 17 of RG 1.147 in August 2014. This condition allows the use of Code Case N–597–3 to calculate wall thinning for moderate-energy Class 2 and 3 piping (using criteria in Code Case N–513–2) for temporary acceptance (until the next refueling outage). When ASME revised N–597, the code case was not modified in a way that would make it possible for the NRC to remove the fourth condition. Therefore, the fourth condition would be retained in Revision 19 of RG 1.147.

The fifth condition is also updated from the sixth condition on Code Case N–597–2 that was first approved by the NRC in Revision 17 of RG 1.147 in August 2014. This condition prohibits the use of this Code Case in evaluating through-wall leakage in high energy piping due to the consequences and safety implications associated with pipe failure.

Code Case N–606–2 [Supplement 2, 2013 Edition]

Type: Revised.

Title: Similar and Dissimilar Metal Welding Using Ambient Temperature Machine GTAW Temper Bead Technique for BWR CRD Housing/Stub Tube Repairs.

The condition on Code Case N–606–2 is identical to the condition on Code Case N–606–1 that was first approved by the NRC in Revision 13 of RG 1.147 in January 2004. The condition stated that ''Prior to welding, an examination or verification must be performed to ensure proper preparation of the base metal, and that the surface is properly contoured so that an acceptable weld can be produced. This verification is to be required in the welding procedure.'' When ASME revised N–606, the code case was not modified in a way that would make it possible for the NRC to remove the condition. Therefore, the condition would be retained in Revision 19 of RG 1.147.

Code Case N–638–7 [Supplement 2, 2013 Edition]

Type: Revised.

Title: Similar and Dissimilar Metal Welding Using Ambient Temperature Machine GTAW Temper Bead Technique.

The condition on Code Case N–638–7 is identical to the condition on Code Case N–638–6 that was first approved by the NRC in Revision 18 of RG 1.147 in the January 2018 final rule and states that ''demonstration for ultrasonic examination of the repaired volume is required using representative samples which contain construction type flaws.'' When ASME revised N–638, the code case was not modified in a way that would make it possible for the NRC to remove the condition. Therefore, the condition would be retained in Revision 19 of RG 1.147.

Code Case N–648–2 [Supplement 7, 2013 Edition]

Type: Revised.

Title: Alternative Requirements for Inner Radius Examinations of Class 1 Reactor Vessel Nozzles Section XI.

The NRC is proposing one condition for this Code Case related to preservice inspections. The condition on N–648–2 is that this Code Case shall not be used to eliminate the preservice or inservice volumetric examination of plants with a combined operating license pursuant to 10 CFR part 52, or a plant that receives its operating license after October 22, 2015.

The NRC staff's position regarding this Code Case is that the required preservice volumetric examinations should be performed on all vessel nozzles for comparison with volumetric examinations later, if indications of flaws are found. Eliminating the volumetric preservice or inservice examination is predicated on good operating experience for the existing fleet, which has not found any inner radius cracking in the nozzles within the scope of the code case. At this time, the new reactor designs have no inspection history or operating experience available to support eliminating the periodic volumetric examination of the nozzles in question. Use of Code Case N–648–2 would not eliminate preservice examinations for the existing fleet since all plants have already completed a preservice examination.

Code Case N–695–1 [Supplement 6, 2013 Edition]

Type: Revised.

Title: Qualification Requirements for Dissimilar Metal Piping Welds Section XI, Division 1.

The NRC proposes to approve Code Case N–695–1 with the following condition. Inspectors qualified using the 0.25 root mean square (RMS) error for measuring the depths of flaws using N–695–1 are not qualified to depth-size inner diameter (ID) surface breaking flaws greater than 50 percent through-wall in dissimilar metal welds 2.1 inches or greater in thickness. When an inspector qualified using N–695–1 measures a flaw as greater than 50 percent through-wall in a dissimilar metal weld from the ID, the flaw shall be considered to have an indeterminate depth.

Code Case N–695–1 provides alternative rules for ultrasonic inspections of dissimilar metal welds from the inner and outer surfaces. Code Case N–695 was developed to allow for inspections from the inner surface in ASME Code Section XI editions prior to 2007. However, no inspection vendor was able to meet the depth-sizing requirements of 0.125 inch RMS error. The NRC has granted relief to several licensees to allow the use of alternate depth-sizing requirements. The NRC reviewed the depth-sizing results at the Performance Demonstration Institute (PDI) for procedures able to achieve an RMS error over 0.125 inches but less than 0.25 inches. The review found that the inspectors tend to oversize small flaws and undersize deep flaws. The flaws sized by the inspectors as 50 percent though-wall or less were accurately or conservatively measured. There were, however, some instances of very large flaws being measured as significantly smaller than the true state, but they were not measured as less than 50 percent through-wall.

Code Case N–695–1 changes the depth sizing requirements for inner-surface examinations of test blocks of 2.1 inches or greater thickness to 0.25 inches. This change is in line with the granted relief requests and with the NRC's review of the PDI test results.

The depth-sizing capabilities of the inspections does not provide sufficient confidence in the ability of an inspector qualified using a 0.25 inch RMS error to accurately measure the depth of deep flaws. The NRC proposes a condition on Code Case N–695–1 in that any surface-connected flaw sized over 50 percent through-wall should be considered of indeterminate depth.

Code Case N–696–1 [Supplement 6, 2013 Edition]

Type: Revised.

Title: Qualification Requirements for Mandatory Appendix VIII Piping Examination Conducted From the Inside Surface.

The NRC proposes to approve Code Case N–696–1 with the following condition. Inspectors qualified using the 0.25 RMS error for measuring the depths of flaws using N–696–1 are not qualified to depth-size ID surface breaking flaws greater than 50 percent through-wall in dissimilar metal welds 2.1 inches or greater in thickness. When an inspector qualified using N–696–1 measures a flaw as greater than 50 percent through-wall in a dissimilar metal weld from the ID, the flaw shall be considered to have an indeterminate depth. Code Case N–696–1 provides alternative rules for ultrasonic inspections of Supplement 2, 3 and 10 welds from the inner and outer surfaces. Code Case N–696 was developed to allow for inspections for welds from the inner surface in ASME Code Section XI editions prior to 2007. However, no inspection vendor was able to meet the depth-sizing requirements of 0.125 inch root mean square (RMS) error. The NRC staff granted relief to several licensees to allow the use of alternate depth-sizing requirements. The NRC reviewed the depth-sizing results at the PDI for procedures able to achieve an RMS error over 0.125 inches but less than 0.25 inches. The review found that the inspectors tend to oversize small flaws and undersize deep flaws. The flaws sized by the inspectors as 50 percent though-wall or less were accurately or conservatively measured. There were, however, some instances of very large flaws being measured as significantly smaller than the true state, but they were not measured as less than 50 percent through-wall.

Code Case N–696–1 changes the depth sizing requirements for inner-surface examinations of test blocks of 2.1 inches or greater thickness to 0.25 inches. This change is consistent with the granted relief requests and with the NRC staff review of the PDI test results. The depth-sizing capabilities of the inspections does not provide sufficient confidence in the ability of an inspector qualified using a 0.25 inch RMS error to accurately measure the depth of deep flaws. Therefore, the NRC proposes a condition on Code Case N–696–1 that any surface-connected flaw sized over 50 percent through-wall should be considered of indeterminate depth.

Code Case N–702 [Supplement 11, 2010 Edition]

Type: Revised.

Title: Alternative Requirements for Boiling Water Reactor (BWR) Nozzle Inner Radius and Nozzle-to-Shell Welds, Section XI, Division 1.

The NRC previously accepted with conditions Code Case N–702 in RG 1.147, Revision 18. For Revision 19 of RG 1.147 the NRC proposes revisions to the conditions on Code Case N–702. The original conditions in RG 1.147, Revision 17, were consistent with the established review procedure for applications for use of Code Case N–702 before August 2014 for the original 40 years of operation. The previous conditions on Code Case N–702 required licensees to prepare and submit for NRC review and approval an evaluation demonstrating the applicability of Code Case N–702 prior to the application of Code Case N–702. Subsequent reviews by the NRC of requests to utilize the provisions of Code Case N–702 show that all licensees have adequately evaluated the applicability of Code Case N–702 during the original 40 years of operation. Therefore future review by the NRC is not needed. For the period of extended operation, the application of Code Case N–702 is prohibited. Licensees that wish to use Code Case N–702 in the period of extended operation may submit relief requests based on BWRVIP–241, Appendix A, ''BWR Nozzle Radii and Nozzle-to-Vessel Welds Demonstration of Compliance with the Technical Information Requirements of the License Renewal Rule (10 CFR 54.21),'' approved on April 26, 2017, or plant-specific probabilistic fracture mechanics analyses. Therefore, the NRC proposes to revise the RG 1.147, Revision 17, condition to reflect these changes.

Consistent with the safety evaluations for all prior ASME Code Case N–702 requests, a condition on visual examination is being added to clarify that the NRC is not relaxing the licensees' practice on VT–1 on nozzle inner radii.

The revised conditions on Code Case N–702 state the following: The applicability of Code Case N–702 for the first 40 years of operation must be demonstrated by satisfying the criteria in Section 5.0 of NRC Safety Evaluation regarding BWRVIP–108 dated December 18, 2007, (ADAMS Accession No. ML073600374) or Section 5.0 of NRC Safety Evaluation regarding BWRVIP–241 dated April 19, 2013 (ADAMS Accession No. ML13071A240).

The use of Code Case N–702 in the period of extended operation is prohibited. If VT–1 is used, it shall utilize ASME Code Case N–648–2, ''Alternative Requirements for Inner Radius Examination of Class 1 Reactor Vessel Nozzles, Section XI Division 1,'' with the associated required conditions specified in Regulatory Guide 1.147.

Code Case N–705 (Errata) [Supplement 11, 2010 Edition]

Type: Revised.

Title: Evaluation Criteria for Temporary Acceptance of Degradation in Moderate Energy Class 2 or 3 Vessels and Tanks.

The NRC has already accepted Code Case N–705 in Regulatory Guide 1.147, Revision 16, without conditions. The revised Code Case in Supplement 11 contains only editorial changes. However, the NRC has identified an area of concern. Paragraph 1(d) of Code Case N–705 states that the evaluation period is the operational time for which the temporary acceptance criteria are satisfied (*i.e.,* evaluation period $\leq t_{allow}$) but not greater than 26 months from the initial discovery of the condition. The NRC finds the 26 months duration unacceptable. The Code Case is applicable to the temporary acceptance of degradation, which could be a through wall leak, and would permit a vessel or tank to leak coolant for 26 months without repair or replacement. The NRC finds it is unacceptable for plant safety to permit a through wall leak in vessels or tanks for 26 months without an ASME Code repair. Therefore, the NRC proposes the following condition on Code Case N–705: The ASME Code repair or replacement activity temporarily deferred under the provisions of this Code Case shall be performed during the next scheduled refueling outage. If a flaw is detected during a scheduled shutdown, an ASME code repair is required before plant restart.

Code Case N–711–1 [Supplement 0, 2017 Edition]

Type: Revised.

Title: Alternative Examination Coverage Requirements for Examination Category B–F, B–J, C–F–1, C–F–2, and R–A Piping Welds.

Code Case N–711 was first listed as unacceptable for use by the NRC in Revision 3 of RG 1.193 in October 2010. Code Case N–711–1 was created to incorporate several NRC conditions for the use of Code Case N–711. This Code Case provides requirements for determining an alternative required examination volume, which is defined as the volume of primary interest based on the postulated degradation mechanism in a particular piping weld.

The NRC finds Code Case N–711–1 acceptable with one condition. The Code Case shall not be used to redefine the required examination volume for preservice examinations or when the postulated degradation mechanism for piping welds is primary water stress corrosion cracking (PWSCC), intergranular stress corrosion cracking (IGSCC) or crevice corrosion (CC). For PWSCC, the staff finds that the examination volume must meet the requirements of ASME Code Case N–770–1 as conditioned by § 50.55a(g)(6)(ii)(F). For IGSCC and CC, the Code Case does not define a volume of primary interest and therefore it cannot be used for these degradation mechanisms. The Code Case requires selection of an alternative inspection location within the same risk region or category if it will improve the examination coverage of the volume of primary interest. Use of the Code Case must be identified in the licensee's 90-day post outage report of activities identifying the examination category, weld number, weld description, percent coverage and a description of limitation. The NRC determined that the Code Case provides a suitable process for determining the appropriate volume of primary interest based on the degradation mechanism postulated by the degradation mechanism analysis, except as noted in the proposed condition.

Code Case N–754–1 [Supplement 1, 2013 Edition]

Type: Revised.

Title: Optimized Structural Dissimilar Metal Weld Overlay for Mitigation of PWR Class 1 Items.

The first condition on Code Case N–754–1 is the same as the first condition on N–754 that was first approved by the NRC in Revision 18 of RG 1.147 in January 2018. The condition stated that: ''The conditions imposed on the optimized weld overlay design in the NRC safety evaluation for MRP–169, Revision 1–A (ADAMS Accession Nos. ML101620010 and ML101660468) must be satisfied.'' When ASME revised N–754, the code case was not modified in a way that would make it possible for the NRC to remove the first condition. Therefore, the first condition would be retained in Revision 19 of RG 1.147.

The second condition on Code Case N–754–1 is the same as the second condition on N–754 that was first approved by the NRC in Revision 18 of RG 1.147 in January 2018. The condition stated that: ''2) The preservice and inservice inspections of the overlaid weld must satisfy 10 CFR 50.55a(g)(6)(ii)(F).'' When ASME revised N–754, the code case was not modified in a way that would make it possible for the NRC to remove the second condition. Therefore, the second condition would be retained in Revision 19 of RG 1.147.

The third condition on Code Case N–754–1 is new and states that the optimized weld overlay in this Code Case can only be installed on an Alloy 82/182 weld where the outer 25 percent of weld wall thickness does not contain indications that are greater than 1/16 inch in length or depth. The optimized weld overlay is designed with the structural support from the outer 25 percent of the existing weld metal (*i.e.,* the base metal) intact. As such, the outer 25 percent of the weld metal needs to be free of degradation prior to the overlay installation. The Code Case is not clear with regard to the condition of the outer 25 percent of the Alloy 82/182 weld prior to the overlay installation. Therefore, the NRC proposes this condition to ensure that the outer 25 percent of the base metal (the weld) has no indications greater than 1/16 inches so that the structural integrity of the repaired weld is maintained.

Code Case N–766–1 [Supplement 1, 2013 Edition]

Type: Revised.

Title: Nickel Alloy Reactor Coolant Inlay and Onlay for Mitigation of PWR Full Penetration Circumferential Nickel Alloy Dissimilar Metal Welds in Class 1 Items.

Code Case N–766–1 contains provisions for repairing nickel-based Alloy 82/182 dissimilar metal butt welds in Class 1 piping using weld inlay and onlay. The NRC notes that the Code Case provides adequate requirements on the design, installation, pressure testing, and examinations of the inlay and onlay. The NRC finds that the weld inlay and onlay using the Code Case provides reasonable assurance that the structural integrity of the repaired pipe will be maintained. However, certain provisions of the Code Case are inadequate and therefore the NRC proposes five conditions. The NRC staff notes that the preservice and inservice inspection requirements of inlay and onlay are specified in Code Case N–770–1 as stated in Section 3(e) of Code Case N–766–1.

The first condition on Code Case N–766–1 is new and prohibits the reduction of preservice and inservice inspection requirements specified by this Code Case for inlays or onlays applied to Alloy 82/182 dissimilar metal welds, which contain an axial indication that has a depth of more than 25 percent of the pipe wall thickness and a length of more than half axial width of the dissimilar metal weld, or a circumferential indication that has a depth of more than 25 percent of the pipe wall thickness and a length of more than 20 percent of the circumference of the pipe. Paragraph 1(c)(1) of the Code Case states that:

> . . . Indications detected in the examination of 3(b)(1) that exceed the acceptance standards of IWB–3514 shall be corrected in accordance with the defect removal requirements of IWA–4000. Alternatively, indications that do not meet the acceptance standards of IWB–3514 may be accepted by analytical evaluation in accordance with IWB–3600 . . .

This alternative would allow a flaw with a maximum depth of 75 percent through wall to remain in service in accordance with the ASME Code, Section XI, IWB–3643. Even if the inlay or onlay will isolate the dissimilar metal weld from the reactor coolant to minimize the potential for stress corrosion cracking, the NRC finds that having a 75 percent flaw in the Alloy 82/182 weld does not provide reasonable assurance of the structural integrity of the pipe. The NRC finds that the indication in the Alloy 82/182 weld needs to be limited in size to ensure structural integrity of the weld.

The second condition on Code Case N–766–1 is new and modifies the Code Case to require that pipe with any thickness of inlay or onlay must be evaluated for weld shrinkage, pipe system flexibility, and additional weight of the inlay or onlay. Paragraph 2(e) of the Code Case states that:

> . . . If the inlay or onlay deposited in accordance with this Case is thicker than 1/8t, where t is the original nominal DMW [Dissimilar Metal Weld] thickness, the effects of any change in applied loads, as a result of weld shrinkage from the entire inlay or onlay, on other items in the piping system (*e.g.,* support loads and clearances, nozzle loads, and changes in system flexibility and weight due to the inlay or onlay) shall be evaluated. Existing flaws previously accepted by analytical evaluation shall be evaluated in accordance with IWB–3640 . . .

The NRC finds that a pipe with any thickness of inlay or onlay must be evaluated for weld shrinkage, pipe system flexibility, and additional weight of the inlay or onlay.

The third condition on Code Case N–766–1 is new. The third condition sets re-examination requirements for inlay or onlay when applied to an Alloy 82/182 dissimilar metal weld with any indication that the weld exceeds the acceptance standards of IWB–3514 and is accepted for continued service in accordance with IWB–3132.3 or IWB–3142.4. This condition states that the subject weld must be inspected in three successive examinations after the installation of the inlay or onlay. The NRC has concerns regarding the fact that the Code Case permits indications exceeding IWB–3514 to remain in service after inlay or onlay installation, based on analytical evaluation of IWB–3600. The IWB–2420 requires three successive examinations for indications that are permitted to remain in service per IWB–3600. The Code Case does not discuss the three successive examinations. If an inlay or onlay is applied to an Alloy 82/182 dissimilar metal weld that contains an indication that exceeds the acceptance standards of IWB–3514 and is accepted for continued service in accordance with IWB–3132.3 or IWB–3142.4, the subject weld must be inspected in three successive examinations after inlay or onlay installation. The NRC proposes this condition to ensure that the three successive examinations will be performed.

The fourth condition on Code Case N–766–1 is new and prohibits an inlay or onlay with detectable subsurface indication discovered by eddy current testing in the acceptance examinations from remaining in service. Operational experience has shown that subsurface flaws on alloy 52 welds for upper heads may be very near the surface. However, these flaws are undetectable by liquid dye penetrant, as there are no surface breaking aspects during initial construction. Nevertheless, in multiple cases, after a plant goes through one or two cycles of operation, these defects become exposed to the primary coolant. The exposure of these subsurface defects to primary coolant challenges the effectiveness of the alloy 52 weld mitigation of only 3mm in total thickness. In the upper head scenario, these welds are inspected each outage. In order to allow the extension of the inspection frequency to that defined by § 50.55a(g)(6)(ii)(F), the NRC found that all detectable subsurface indications by eddy current examination should be removed from the alloy 52 weld layer.

The fifth condition on Code Case N–766–1 is new and requires that the flaw analysis of paragraph 2(d) of the Code Case shall also consider primary water stress corrosion cracking growth in the circumferential and axial directions, in accordance with IWB–3640. The postulated flaw evaluation in the Code Case only requires a fatigue analysis. Conservative generic analysis by the NRC has raised the concern that a PWSCC could potentially grow through the inner alloy 52 weld layer and into the highly susceptible alloy 82/182 weld material, to a depth of 75 percent through-wall, within the period of reexamination frequency required by § 50.55a(g)(6)(ii)(F). Therefore, users of this Code Case will verify, for each weld, that a primary water stress corrosion crack will not reach a depth of 75 percent through-wall within the required re-inspection interval due to PWSCC.

Code Case N–824 [Supplement 11, 2010 Edition]

Type: New.

Title: Ultrasonic Examination of Cast Austenitic Piping Welds From the Outside Surface, Section XI, Division 1.

Code Case N–824 is a new Code Case for the examination of cast austenitic piping welds from the outside surface. The NRC, using NUREG/CR–6933 and NUREG/CR–7122, determined that inspections of cast austenitic stainless steel (CASS) materials are very challenging, and sufficient technical basis exists to condition the Code Case to bring the Code Case into agreement with the NUREG/CR reports. The NUREG/CR reports also show that CASS materials produce high levels of coherent noise. The noise signals can be confusing and mask flaw indications.

The use of dual element phased-array search units showed the most promise in obtaining meaningful responses from flaws. For this reason, the NRC is proposing to add a condition to require the use of dual, transmit-receive, refracted longitudinal wave, multi-element phased array search units when utilizing N–824 for the examination of CASS components.

The optimum inspection frequencies for examining CASS components of various thicknesses are described in NUREG/CR–6933 and NUREG/CR–7122. For this reason, the NRC is proposing to add a condition to require that ultrasonic examinations performed to implement ASME BPV Code Case N–824 on piping greater than 1.6 inches thick shall use a phased array search unit with a center frequency of 500 kHz with a tolerance of +/− 20 percent.

The NUREG/CR–6933 shows that the grain structure of CASS can reduce the effectiveness of some inspection angles, namely angles including, but not limited to, 30 to 55 degrees with a maximum increment of 5 degrees. Because the NRC is requiring the use of a phased array search unit, the NRC finds that the use of the phased array search unit must be limited so that the unit is used at inspection angles that would provide acceptable results. For this reason, the NRC is adding a condition to require that ultrasonic examinations performed to implement ASME BPV Code Case N–824 shall use a phased array search unit that produce angles including, but not limited to, 30 to 55 degrees with a maximum increment of 5 degrees. Therefore, the NRC finds Code Case N–824 acceptable with the following poroposed conditions: (1) Instead of Paragraph 1(c)(1)(–c)(–2), licensees shall use a phased array search unit with a center frequency of 500 kHz with a tolerance of ± 20 percent, and (2) instead of Paragraph 1(c)(1)(–d), the phased array search unit must produce angles including, but not limited to, 30 to 55 degrees with a maximum increment of 5 degrees.

Existing regulations in § 50.55a paragraphs (a)(1)(iii)(E) and (b)(2)(xxxvii) discuss N–824 and the associated conditions. Because N–824 would now be discussed in RG 1.147, the existing requirements are redundant. These paragraphs would be removed.

Code Case N–829 [Supplement 0, 2013 Edition]

Type: New.

Title: Austenitic Stainless Steel Cladding and Nickel Base Cladding Using Ambient Temperature Machine GTAW Temper Bead Technique.

Code Case N–829 is a new Code Case for the use of automatic or machine GTAW temper bead technique for the repair of stainless steel cladding and nickel-base cladding without the specified preheat or postweld heat treatment in Section XI, Paragraph IWA–4411.

The NRC finds the Code Case acceptable on the condition that the provisions of Code Case N–829, paragraph 3(e)(2) or 3(e)(3) may only be used when it is impractical to use the interpass temperature measurement methods described in 3(e)(1), such as in situations where the weldment area is inaccessible (*e.g.,* internal bore welding) or when there are extenuating radiological conditions. The NRC has determined that interpass temperature measurement is critical to obtaining acceptable corrosion resistance and/or notch toughness in a weld. Only in areas which are totally inaccessible to temperature measurement devices or when there are extenuating radiological conditions shall alternate methods be allowed such as the calculation method from section 3(e)(2) in ASME Code Case N–829 or the weld coupon test method shown in section 3(e)(3) in ASME Code Case N–829.

Code Case N–830 [Supplement 7, 2013 Edition]

Type: New.

Title: Direct Use of Master Fracture Toughness Curve for Pressure-Retaining Materials of Class 1 Vessels.

Code Case N–830 is a new Code Case introduced in the 2013 Edition of the ASME Code. This Code Case outlines the use of a material specific master curve as an alternative fracture toughness curve for crack initiation, K_{IC}, in Section XI, Division 1, Appendices A and G, for Class 1 pressure retaining materials, other than bolting.

The NRC finds the Code Case acceptable with one condition to prohibit the use of the provision in

Paragraph (f) of the Code Case that allows for the use of an alternative to limiting the lower shelf of the 95 percent lower tolerance bound Master Curve toughness, $K_{JC\text{-lower }95\%}$, to a value consistent with the current KIC curve. Code Case N–830 contains provisions for using the $K_{JC\text{-lower }95\%}$ curve and the master curve-based reference temperature T_o as an alternative to the K_{IC} curve and the nil-ductility transition reference temperature RT_{NDT} in Appendices A and G of the ASME Code, Section XI. T_o is determined in accordance with ASTM International Standard E 1921, ''Standard Test Method for the Determination of Reference Temperature, T_o, for Ferritic Steels in the Transition Range,'' from direct fracture toughness testing data. The RT_{NDT} is determined in accordance with ASME Code, Section III, NB–2330, ''Test Requirements and Acceptance Standards,'' from indirect Charpy V-notch testing data, and RG 1.99, Revision 2, ''Radiation Embrittlement of Reactor Vessel Materials.'' Considering the entire test data at a wide range of $T–RT_{NDT}$ (-400 °F to 100 °F), the NRC found that the current K_{IC} curve also represents approximately a 95 percent lower tolerance bound for the data. Thus, using $K_{JC\text{-lower }95\%}$ curve based on the Master Curve is acceptable. However, since Paragraph (f) provides a significant deviation from the $K_{JC\text{-lower }95\%}$ curve for $(T–T_o)$ below -115 °F in a non-conservative manner without justification, the NRC determined that Paragraph (f) of N–830 must not be applied when using N–830.

Code Case N–831 [Supplement 0, 2017 Edition]

Type: New.

Title: Ultrasonic Examination in Lieu of Radiography for Welds in Ferritic Pipe.

Code Case N–831 is a new Code Case, which provides an alternative to radiographic testing when it is required by the construction code for Section Xl repair/replacement activities. This Code Case describes the requirements for inspecting ferritic welds for fabrication flaws using Ultrasonic Testing (UT) as an alternative to the current requirements to use radiography. The Code Case describes the scanning methods, recordkeeping and performance demonstration qualification requirements for the ultrasonic procedures, equipment, and personnel.

The NRC finds the Code Case acceptable with the condition that it is prohibited for use in new reactor construction. History has shown that the combined use of radiographic testing for weld fabrication examinations followed by the use of UT for pre-service inspections (PSI) and ISI ensures that workmanship is maintained (with radiographic testing) while potentially critical planar fabrication flaws are not put into service (with UT). Until studies are completed that demonstrate the ability of UT to replace radiographic testing (repair/replacement activity), the NRC will not generically allow the substitute of UT in lieu of radiographic testing for weld fabrication examinations. In addition, ultrasonic examinations are not equivalent to radiographic examinations as they use different physical mechanisms to detect and characterize discontinuities. These differences in physical mechanisms result in several key differences in sensitivity and discrimination capability. As a result of these differences, as well as in consideration of the inherent strengths of each of the methods, the two methods are not considered to be interchangeable, but are considered complementary. Therefore, the NRC determined that this Code Case is not acceptable for use on new reactor construction.

Code Case N–838 [Supplement 2, 2015 Edition]

Type: New.

Title: Flaw Tolerance Evaluation of Cast Austenitic Stainless Steel Piping Section XI, Division 1.

The NRC proposes to approve Code Case N–838 with the following condition: Code Case N–838 shall not be used to evaluate flaws in cast austenitic stainless steel piping where the delta ferrite content exceeds 25 percent.

Code Case N–838 contains provisions for performing a postulated flaw tolerance evaluation of ASME Class 1 and 2 CASS piping with delta ferrite exceeding 20 percent. The Code Case provides a recommended target flaw size for the qualification of nondestructive examination methods, along with an approach that may be used to justify a larger target flaw size, if needed. The Code Case is intended for the flaw tolerance evaluation of postulated flaws in CASS base metal adjacent to welds, in conjunction with license renewal commitments. The NRC notes that the Code Case is limited in application and provides restrictions so that the Code Case will not be misused. For example, the Code Case is applicable to portions of Class 1 and 2 piping comprised of SA–351 statically- or centrifugally-cast Grades CF3, CF3A, CF3M, CF8, CF8A and CF8M base metal with delta ferrite exceeding 20 percent and niobium or columbium content not greater than 0.2 weight percent. This Code Case is limited to be applied to thermally aged CASS material types as listed with normal operating temperatures between 500 °F and 662 °F. The Code Case is not applicable for evaluation of detected flaws. Section 3 of the Code Case provides specific analytical evaluation procedures for the pipe mean-radius-to-thickness ratio greater than 10 and for those with a ratio less than 10. Tables 1 through 4 provide the maximum tolerable flaw depth-to-thickness ratio for circumference and axial flaws.

However, the NRC finds paragraph 3(c) of the Code Case to be inadequate. Paragraph 3(c) specifies that for delta ferrite exceeding 25 percent, or pipe mean radius-to-thickness ratio, R/t, exceeding 10, the flaw tolerance evaluation shall be performed except that representative data shall be used to determine the maximum tolerable flaw depths applicable to the CASS base metal and R/t in lieu of Tables 1 through 4 of the Code Case.

The NRC notes that there are insufficient fracture toughness data for cast austenitic stainless steel that is greater than 25 percent in the open source literature. As such, the NRC needs to review flaw tolerance evaluations to ensure that they are performed with adequate conservatism. Therefore, the NRC proposes a condition to prohibit the use of this Code Case where delta ferrite in cast austenitic stainless steel piping exceeds 25 percent.

Code Case N–843 [Supplement 4, 2013 Edition]

Type: New.

Title: Alternative Pressure Testing Requirements Following Repairs or Replacements for Class 1 Piping between the First and Second Inspection Isolation Valves, Section XI, Division 1.

Code Case N–843 is consistent with alternatives that have been granted by the NRC. The NRC is concerned about return lines being included that could allow significantly lower pressures to be used on Class 1 portions of return lines. Therefore, the NRC proposes a condition to ensure the injection lines are tested at the highest pressure of the line's intended safety function. If the portions of the system requiring pressure testing are associated with more than one safety function, the pressure test and visual examination VT–2 shall be performed during a test conducted at the higher of the operating pressures for the respective system safety functions.

Code Case N–849 [Supplement 7, 2013 Edition]

Type: New.

Title: In Situ VT–3 Examination of Removable Core Support Structures Without Removal.

Code Case N–849 is a new Code Case introduced in the 2013 Edition of ASME Code. This Code Case is meant to provide guidelines for allowing the VT–3 inspection requirements of Table IWB–2500–1 for preservice or inservice inspections of the core support structures to be performed without the removal of the core support structure. The NRC finds the Code Case acceptable with two proposed conditions.

The first condition on Code Case N–849 limits the use of the Code Case to plants that are designed with accessible core support structures to allow for *in situ* inspection. Code Case N–849 allows the performance of VT–3 preservice or inservice visual examinations of removable core support structures *in situ* using a remote examination system. A provision of the Code Case is that all surfaces accessible for examination when the structure is removed shall be accessible when the structure is *in situ,* except for load bearing and contact surfaces, which would only be inspected when the core barrel is removed. Designs for new reactors, such as small modular reactors, may include accessibility of the annulus between the core barrel and the reactor vessel. Unlike new reactor designs, currently operating plants were not designed to allow *in situ* VT–3 examinations. There are no industry survey results of the current fleet to provide an evaluation of operating plant inspection findings. Therefore, applicability to the designs of currently operating plants has not been satisfactorily addressed.

The second condition on Code Case N–849 requires that prior to initial plant startup, the VT–3 preservice examination shall be performed with the core support structure removed, as required by ASME Section XI, IWB–2500–1, and shall include all surfaces that are accessible when the core support structure is removed, including all load bearing and contact surfaces. The NRC has concerns that a preservice examination would not be performed on the load bearing and contact surfaces even though the surfaces would be accessible prior to installing the core support structure. There is also no evidence that the *in situ* examination will achieve the same coverage as the examination with the core support structure removed.

3. ASME Operation and Maintenance Code Cases (DG–1343/RG 1.192)

Code Case OMN–1 Revision 2 [2017 Edition]

Type: Revised.

Title: Alternative Rules for Preservice and Inservice Testing of Active Electric Motor-Operated Valve Assemblies in Light-Water Reactor Power Plants.

The proposed conditions on Code Case OMN–1, Revision 2 [2017 Edition] are identical to the conditions on OMN–1 Revision 1 [2012 Edition] that were approved by the NRC in Revision 2 of RG 1.192 in January 2018. When ASME revised OMN–1, the code case was not modified in a way that would make it possible for the NRC to remove the conditions. Therefore the conditions would be retained in Revision 3 of RG 1.192.

Code Case OMN–3 [2017 Edition]

Type: Reaffirmed.

Title: Requirements for Safety Significance Categorization of Components Using Risk Insights for Inservice Testing of LWR Power Plants.

The proposed conditions on Code Case OMN–3 [2017 Edition] are identical to the conditions on OMN–3 [2012 Edition] that were approved by the NRC in Revision 2 of RG 1.192 in January 2018. When ASME revised OMN–3, the code case was not modified in a way that would make it possible for the NRC to remove the conditions. Therefore the conditions would be retained in Revision 3 of RG 1.192.

Code Case OMN–4 [2017 Edition]

Type: Reaffirmed.

Title: Requirements for Risk Insights for Inservice Testing of Check Valves at LWR Power Plants.

The proposed conditions on Code Case OMN–4 [2017 Edition] are identical to the conditions on OMN–4 [2012 Edition] that were approved by the NRC in Revision 2 of RG 1.192 in January 2018. When ASME revised OMN–4, the code case was not modified in a way that would make it possible for the NRC to remove the conditions. Therefore, the conditions would be retained in Revision 3 of RG 1.192.

Code Case OMN–9 [2017 Edition]

Type: Reaffirmed.

Title: Use of a Pump Curve for Testing.

The proposed conditions on Code Case OMN–9 [2017 Edition] are identical to the conditions on OMN–9 [2012 Edition] that were approved by the NRC in Revision 2 of RG 1.192 in January 2018. When ASME revised OMN–9, the code case was not modified in a way that would make it possible for the NRC to remove the conditions. Therefore, the conditions would be retained in Revision 3 of RG 1.192.

Code Case OMN–12 [2017 Edition]

Type: Reaffirmed.

Title: Alternative Requirements for Inservice Testing Using Risk Insights for Pneumatically and Hydraulically Operated Valve Assemblies in Light-Water Reactor Power Plants (OM-Code 1998, Subsection ISTC).

The proposed conditions on Code Case OMN–12 [2017 Edition] are identical to the conditions on OMN–12 [2012 Edition] that were approved by the NRC in Revision 2 of RG 1.192 in January 2018. When ASME revised OMN–12, the code case was not modified in a way that would make it possible for the NRC to remove the conditions. Therefore, the conditions would be retained in Revision 3 of RG 1.192.

Code Case OMN–18 [2017 Edition]

Type: Reaffirmed.

Title: Alternate Testing Requirements for Pumps Tested Quarterly Within ±20% of Design Flow.

The proposed conditions on Code Case OMN–18 [2017 Edition] are identical to the conditions on OMN–18 [2012 Edition] that were approved by the NRC in Revision 2 of RG 1.192 in January 2018. When ASME revised OMN–18, the code case was not modified in a way that would make it possible for the NRC to remove the conditions. Therefore, the conditions would be retained in Revision 3 of RG 1.192.

Code Case OMN–19 [2017 Edition]

Type: Reaffirmed.

Title: Alternative Upper Limit for the Comprehensive Pump Test.

The proposed conditions on Code Case OMN–19 [2017 Edition] are identical to the conditions on OMN–19 [2012 Edition] that were approved by the NRC in Revision 2 of RG 1.192 in January 2018. When ASME revised OMN–19, the code case was not modified in a way that would make it possible for the NRC to remove the conditions. Therefore, the conditions would be retained in Revision 3 of RG 1.192.

Code Case OMN–20 [2017 Edition]

Type: Reaffirmed.

Title: Inservice Test Frequency.

This Code Case is applicable to the editions and addenda of the OM Code listed in § 50.55a(a)(1)(iv).

With the acceptance of Code Case OMN–20 in RG 1.192, Revision 3, paragraphs (a)(1)(iii)(G) and (b)(3)(x) in § 50.55a accepting Code Case OMN–20 are unnecessary and would be removed with this proposed rule.

C. ASME Code Cases not Approved for Use (DG–1344/RG 1.193)

The ASME Code Cases that are currently issued by the ASME but not approved for generic use by the NRC are listed in RG 1.193, ''ASME Code Cases not Approved for Use.'' In addition to ASME Code Cases that the NRC has found to be technically or programmatically unacceptable, RG 1.193 includes Code Cases on reactor designs for high-temperature gas-cooled reactors and liquid metal reactors, reactor designs not currently licensed by the NRC, and certain requirements in Section III, Division 2, for submerged spent fuel waste casks, that are not endorsed by the NRC. Regulatory Guide 1.193 complements RGs 1.84, 1.147, and 1.192. It should be noted that the NRC is not proposing to adopt any of the Code Cases listed in RG 1.193. However, comments have been submitted in the past on certain Code Cases listed in RG 1.193 where the commenter believed that additional technical information was available that might not have been considered by the NRC in its determination to not approve the use of these Code Cases. While the NRC will consider those comments, the NRC is not requesting comment on RG 1.193 at this time. Any changes in the NRC's non-approval of such Code Cases will be the subject of an additional opportunity for public comment.

IV. Section-by-Section Analysis

The following paragraphs in § 50.55a would be revised as follows:

Paragraph (a)(1)(iii)(E)

This proposed rule would remove and reserve paragraph (a)(1)(iii)(E).

Paragraph (a)(1)(iii)(G)

This proposed rule would remove paragraph (a)(1)(iii)(G).

Paragraph (a)(3)

This proposed rule would include a condition in paragraph (a)(3) stating that the Code Cases listed in RGs 1.84, 1.147, and 1.192 may be applied with the specified conditions when implementing the editions and addenda of the ASME BPV and OM Codes incorporated by reference in § 50.55a.

Paragraph (a)(3)(i)

This proposed rule would revise the reference to ''*NRC Regulatory Guide 1.84, Revision 37,*'' by removing ''Revision 37'' and adding in its place ''Revision 38.''

Paragraph (a)(3)(ii)

This proposed rule would revise the reference to ''*NRC Regulatory Guide 1.147, Revision 18,*'' by removing ''Revision 18'' and adding in its place ''Revision 19.''

Paragraph (a)(3)(iii)

This proposed rule would revise the reference to ''*NRC Regulatory Guide 1.192, Revision 2,*'' by removing ''Revision 2'' and adding in its place ''Revision 3.''

Paragraph (b)(2)(xxxvii)

This proposed rule would remove paragraph (b)(2)(xxxvii).

Paragraph (b)(3)(x)

This proposed rule would remove and reserve paragraph (b)(3)(x).

V. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

VI. Regulatory Analysis

The NRC has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The NRC requests public comment on the draft regulatory analysis. The regulatory analysis is available as indicated in the ''Availability of Documents'' section of this document. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** caption of this document.

VII. Backfitting and Issue Finality

The provisions in this proposed rule would allow licensees and applicants to voluntarily apply NRC-approved Code Cases, sometimes with NRC-specified conditions. The approved Code Cases are listed in three RGs that are proposed to be incorporated by reference into § 50.55a. An applicant's or a licensee's voluntary application of an approved Code Case does not constitute backfitting, inasmuch as there is no imposition of a new requirement or new position.

Similarly, voluntary application of an approved Code Case by a 10 CFR part 52 applicant or licensee does not represent NRC imposition of a requirement or action, which is inconsistent with any issue finality provision in 10 CFR part 52. For these reasons, the NRC finds that this proposed rule does not involve any provisions requiring the preparation of a backfit analysis or documentation demonstrating that one or more of the issue finality criteria in 10 CFR part 52 are met.

VIII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

IX. Environmental Assessment and Proposed Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act (NEPA) of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment; therefore, an environmental impact statement is not required.

The determination of this environmental assessment is that there will be no significant effect on the quality of the human environment from this action. Interested parties should note, however, that comments on any aspect of this environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** section of this document.

As voluntary alternatives to the ASME Code, NRC-approved Code Cases provide an equivalent level of safety. Therefore, the probability or consequences of accidents is not changed. There are also no significant, non-radiological impacts associated with this action because no changes would be made affecting non-radiological plant effluents and because no changes would be made in activities that would adversely affect the environment. The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action.

X. Paperwork Reduction Act Statement

This proposed rule contains new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed rule has been submitted to the Office of Management and Budget (OMB) for approval of the information collections.

Type of submission, new or revision: Revision.

The title of the information collection: Domestic Licensing of Production and Utilization.

Facilities: Updates to Incorporation by Reference and Regulatory Guides.

The form number if applicable: Not applicable.

How often the collection is required: On occasion.

Who will be required or asked to report: Operating power reactor licensees and applicants for power reactors under construction.

An estimate of the number of annual responses: −24 (reduction).

The estimated number of annual respondents: −24 (reduction).

An estimate of the total number of hours needed annually to complete the requirement or request: −9,120 hours (reduction of reporting hours.)

Abstract: This proposed rule is the latest in a series of rulemakings that incorporate by reference the latest versions of several Regulatory Guides identifying new and revised unconditionally or conditionally acceptable ASME Code Cases that are approved for use. The incorporation by reference of these Code Cases will reduce the number of alternative requests submitted by licensees under § 50.55a(z) by an estimated 24 requests annually.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of the burden of the proposed 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 proposed information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the OMB clearance package and proposed rule is available in ADAMS under Accession No. ML18099A046 or may be viewed free of charge at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. You may obtain information and comment submissions related to the OMB clearance package by searching on *http://www.regulations.gov* under Docket ID NRC–2017–0024.

You may submit comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the four issues, by the following methods:

• *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0024.

• *Mail comments to:* Information Services Branch, Office of the Chief Information Officer, Mail Stop: T–2F43, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–0011) Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: *oira_submission@omb.eop.gov.*

Submit comments by September 17, 2018. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

XI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is continuing to use ASME BPV and OM Code Cases, which are ASME-approved voluntary alternatives to compliance with various provisions of the ASME BPV and OM Codes. The NRC's approval of the ASME Code Cases is accomplished by amending the NRC's regulations to incorporate by reference the latest revisions of the following, which are the subject of this rulemaking, into § 50.55a: RG 1.84, Revision 38; RG 1.147, Revision 19; and RG 1.192, Revision 3. These RGs list the ASME Code Cases that the NRC has approved for use. The ASME Code Cases are national consensus standards as defined in the National Technology Transfer and Advancement Act of 1995 and OMB Circular A–119. The ASME Code Cases constitute voluntary consensus standards, in which all interested parties (including the NRC and licensees of nuclear power plants) participate. The NRC invites comment on the applicability and use of other standards.

XII. Incorporation by Reference

The NRC proposes to incorporate by reference three NRC RGs that list new and revised ASME Code Cases that the NRC has approved as voluntary alternatives to certain provisions of NRC-required Editions and Addenda of the ASME BPV Code and the ASME OM Code. The draft regulatory guides DG–1345, DG–1342, and DG–1343 will correspond to final RG 1.84, Revision 38; RG 1.147, Revision 19; and RG 1.192, Revision 3, respectively. A summary of the material the NRC proposes to incorporate by reference is provided in the ''Discussion'' section of this document.

The NRC is required to obtain approval for incorporation by reference from the Office of the Federal Register (OFR) as set forth in 1 CFR part 51. The OFR regulations require an agency to include in a proposed rule a discussion of the ways that the materials the agency proposes to incorporate by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties. The discussion in this section complies with the requirement for proposed rules as set forth in 1 CFR 51.5(a)(1).

The NRC considers ''interested parties'' to include all potential NRC stakeholders, not only the individuals and entities regulated or otherwise subject to the NRC's regulatory oversight. These NRC stakeholders are not a homogenous group, so the considerations for determining ''reasonable availability'' vary by class of interested parties. The NRC identifies six classes of interested parties with regard to the material to be incorporated by reference in an NRC rule:

• Individuals and small entities regulated or otherwise subject to the NRC's regulatory oversight. This class includes applicants and potential applicants for licenses and other NRC regulatory approvals, and who are subject to the material to be incorporated by reference. In this context, ''small entities'' has the same meaning as set out in 10 CFR 2.810.

• Large entities otherwise subject to the NRC's regulatory oversight. This class includes applicants and potential applicants for licenses and other NRC regulatory approvals, and who are subject to the material to be incorporated by reference. In this context, a ''large entity'' is one that does not qualify as a ''small entity'' under 10 CFR 2.810.

- Non-governmental organizations with institutional interests in the matters regulated by the NRC.
- Other Federal agencies, states, local governmental bodies (within the meaning of 10 CFR 2.315(c)).
- Federally-recognized and State-recognized Indian tribes.
- Members of the general public (*i.e.,* individual, unaffiliated members of the public who are not regulated or otherwise subject to the NRC's regulatory oversight) and who need access to the materials that the NRC proposes to incorporate by reference in order to participate in the rulemaking.

The three draft RGs that the NRC proposes to incorporate by reference in this proposed rule are available without cost and can be read online, downloaded, or viewed, by appointment, at the NRC Technical Library, which is located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852; telephone: 301–415–7000; email: *Library.Resource@nrc.gov*. The final RGs, if approved by the OFR for incorporation by reference, will also be available for inspection at the OFR, as described in 10 CFR 50.55a(a).

Because access to the three draft regulatory guides, and eventually, the final regulatory guides, are available in various forms at no cost, the NRC determines that the three draft regulatory guides, DG–1345, DG–1342, and DG–1343, and final regulatory guides 1.84, Revision 38; RG 1.147, Revision 19; and RG 1.192, Revision 3, once approved by the OFR for incorporation by reference, are reasonably available to all interested parties.

XIII. Availability of Documents

The documents identified in the following tables are available to interested persons through one or more of the following methods, as indicated. Throughout the development of this rule, the NRC may post documents related to this rule, including public comments, on the Federal rulemaking website at: http://www.regulations.gov under Docket ID NRC–2017–0024. The Federal rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2017–0024); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

TABLE III—RULEMAKING RELATED DOCUMENTS

Document title	ADAMS accession No./ **Federal Register** citation
Federal Register notice—''Incorporation by Reference of ASME BPV and OM Code Cases,'' July 8, 2003	68 FR 40469.
Federal Register Notice—''Fracture Toughness Requirements for Light Water Reactor Pressure Vessels,'' December 19, 1995.	60 FR 65456.
Final Safety Evaluation for Nuclear Energy Institute ''Topical Report Materials Reliability Program (MRP): Technical Basis for Preemptive Weld Overlays for Alloy 82/182 Butt Welds in Pressurized Water Reactors (MRP–169) Revision 1–A,'' August 9, 2010.	ML101620010. ML101660468.
EPRI Nuclear Safety Analysis Center Report 202L–2, ''Recommendations for an Effective Flow Accelerated Corrosion Program,'' April 1999.	Available for purchase.
ASTM International Standard E 1921, ''Standard Test Method for the Determination of Reference Temperature, T_o, for Ferritic Steels in the Transition Range,''.	Available for purchase.
ASME Code, Section III, NB–2330, ''Test Requirements and Acceptance Standards,''	Available for purchase.
Regulatory Guide 1.99, Revision 2, ''Radiation Embrittlement of Reactor Vessel Materials,''	ML102310298.
Federal Register notice—''Approval of American Society of Mechanical Engineers' Code Cases'' dated January 17, 2018.	83 FR 2331.
RG 1.193, ''ASME Code Cases Not Approved for Use,'' Revision 6. (DG–1344)	ML18114A227.
Draft Regulatory Analysis	ML18099A054.

Documents Proposed To Be Incorporated by Reference

The NRC proposes to incorporate by reference three NRC RGs that list new and revised ASME Code Cases that the NRC has approved as voluntary alternatives to certain provisions of NRC-required Editions and Addenda of the ASME BPV Code and the ASME OM Code.

TABLE IV—DRAFT REGULATORY GUIDES PROPOSED TO BE INCORPORATED BY REFERENCE IN 10 CFR 50.55A

Document title	ADAMS accession No./ **Federal Register** citation
RG 1.84, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,'' Revision 38. (DG–1345).	ML18114A228.
RG 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' Revision 19. (DG–1342)	ML18114A225.
RG 1.192, ''Operation and Maintenance Code Case Acceptability, ASME OM Code,'' Revision 3. (DG–1343)	ML18114A226.

Code Cases for Approval in This Proposed Rule

The ASME BPV Code Cases that the NRC is proposing to approve as alternatives to certain provisions of the ASME BPV Code, as set forth in Table V, are being made available by the ASME for read-only access during the public comment period on the *http://go.asme.org/NRC-ASME-CC.*

The ASME OM Code Cases that the NRC is proposing to approve as alternatives to certain provisions of the ASME OM Code, as set forth in Table V, are being made available for read-only access during the public comment period by the ASME on the *http://go.asme.org/NRC-ASME-CC.*

The ASME is making the Code Cases listed in Table V available for limited, read-only access at the request of the NRC. The NRC believes that stakeholders need to be able to read these Code Cases in order to provide meaningful comment on the three RGs (listed in Table IV) that the NRC is proposing to incorporate by reference into § 50.55a. It is the NRC's position that the listed Code Cases, as modified by any conditions contained in the three RGs and thus serving as alternatives to requirements in § 50.55a, are legally-binding regulatory requirements. An applicant or licensee must comply with a listed Code Case and any conditions to be within the scope of the NRC's approval of the Code Case as a voluntary alternative for use. These requirements cannot be fully understood without knowledge of the Code Case to which the proposed condition applies, and to this end, the NRC has requested that ASME provide limited, read-only access to the Code Cases in order to facilitate meaningful public comment.

TABLE V—ASME CODE CASES PROPOSED FOR NRC APPROVAL

Code case No.	Supplement	Title
Boiler and Pressure Vessel Code Section III		
N–60–6	11 (2010 Edition)	Material for Core Support Structures, Section III, Division 1 SUPP 11.
N–71–19	0 (2013 Edition)	Additional Materials for Subsection NF, Class 1, 2, 3, and MC Supports Fabricated by Welding, Section III, Division 1.
N–249–15	7 (2013 Edition)	Additional Materials for Subsection NF, Classes 1, 2, 3, and MC Supports Fabricated Without Welding, Section III, Division 1.
N–284–4	11 (2010 Edition)	Metal Containment Shell Buckling Design Methods, Class MC, TC, and SC Construction Section III, Divisions 1 and 3.
N–520–6	1 (2013 Edition)	Alternative Rules for Renewal of Active or Expired N-type Certificates for Plants Not in Active Construction, Section III, Division 1.
N–801–1	11 (2010 Edition)	Rules for Repair of N-Stamped Class 1, 2, and 3 Components Section III, Division 1.
N–822–2	7 (2013 Edition)	Application of the ASME Certification Mark Section III, Divisions 1, 2, 3, and 5.
N–833	1 (2013 Edition)	Minimum Non-prestressed Reinforcement in the Containment Base Mat or Slab Required for Concrete Crack Control, Section III, Division 2.
N–834	3 (2013 Edition)	ASTM A988/A988M–11 UNS S31603, Subsection NB, Class 1 Components, Section III, Division 1.
N–836	3 (2013 Edition)	Heat Exchanger Tube Mechanical Plugging, Class 1, Section III, Division 1.
N–841	4 (2013 Edition)	Exemptions to Mandatory Post Weld Heat Treatment (PWHT) of SA–738 Grade B for Class MC Applications, Section III, Division 1.
N–844	5 (2013 Edition)	Alternatives to the Requirements of NB–4250(c), Section III, Division 1.
Boiler and Pressure Vessel Code Section XI		
N–513–4	6 (2013 Edition)	Evaluation of Criteria for Temporary Acceptance of Flaws in Moderate Energy Class 2 or 3 Piping, Section XI, Division 1.
N–516–4	7 (2013 Edition)	Underwater Welding, Section XI, Division 1.
N–528–1	5 (1998 Edition)	Purchase, Exchange, or Transfer of Material Between Nuclear Plant Sites Section XI, Division 1.
N–597–3	5 (2013 Edition)	Evaluation of Pipe Wall Thinning, Section XI, Division 1.
N–606–2	2 (2013 Edition)	Similar and Dissimilar Metal Welding Using Ambient Temperature Machine GTAW Temper Bead Technique for BWR CRD Housing/Stub Tube Repairs, Section XI, Division 1.
N–638–7	2 (2013 Edition)	Similar and Dissimilar Metal Welding Using Ambient Temperature Machine GTAW Temper Bead Technique.
N–648–2	7 (2013 Edition)	Alternative Requirements for Inner Radius Examinations of Class 1 Reactor Vessel Nozzles, Section XI, Division 1.
N–661–3	6 (2015 Edition)	Alternative Requirements for Wall Thickness Restoration of Class 2 and 3 Carbon Steel Piping for Raw Water Service, Section XI, Division 1.
N–695–1	0 (2015 Edition)	Qualification Requirements for Dissimilar Metal Piping Welds Section XI, Division 1.
N–696–1	6 (2013 Edition)	Qualification Requirements for Mandatory Appendix VIII Piping Examination Conducted from the Inside Surface, Section XI, Division 1.
N–702	12 (2001 Edition)	Alternative Requirements for Boiling Water Reactor (BWR) Nozzle Inner Radius and Nozzle-to-Shell Welds, Section XI, Division 1.

TABLE V—ASME CODE CASES PROPOSED FOR NRC APPROVAL—Continued

Code case No.	Supplement	Title
N–705(Errata)	11 (2010 Edition)	Evaluation Criteria for Temporary Acceptance of Degradation in Moderate Energy Class 2 or 3 Vessels and Tanks, Section XI, Division 1.
N–711–1	0 (2017 Edition)	Alternative Examination Coverage Requirements for Examination Category B–F, B–J, C–F–1, C–F–2, and R–A Piping Welds.
N–754–1	1 (2013 Edition)	Optimized Structural Dissimilar Metal Weld Overlay for Mitigation of PWR Class 1 Items, Section XI, Division 1.
N–762–1	3 (2013 Edition)	Temper Bead Procedure Qualification Requirements for Repair/Replacement Activities without Postweld Heat Treatment, Section XI, Division 1.
N–766–1	1 (2013 Edition)	Nickel Alloy Reactor Coolant Inlay and Onlay for Mitigation of PWR Full Penetration Circumferential Nickel Alloy Dissimilar Metal Welds in Class 1 Items, Section XI, Division 1.
N–789–2	5 (2015 Edition)	Alternative Requirements for Pad Reinforcement of Class 2 and 3 Moderate Energy Carbon Steel Piping for Raw Water Service.
N–823–1	4 (2013 Edition)	Visual Examination Section XI, Division 1.
N–824	11 (2010 Edition)	Ultrasonic Examination of Cast Austenitic Piping Welds From the Outside Surface Section XI, Division 1.
N–829	0 (2013 Edition)	Austenitic Stainless Steel Cladding and Nickel Base Cladding Using Ambient Temperature Machine GTAW Temper Bead Technique, Section XI, Division 1.
N–830	7 (2013 Edition)	Direct Use of Master Fracture Toughness Curve for Pressure-Retaining Materials of Class 1 Vessels, Section XI.
N–831	0 (2017 Edition)	Ultrasonic Examination in Lieu of Radiography for Welds in Ferritic Pipe.
N–838	2 (2015 Edition)	Flaw Tolerance Evaluation of Cast Austenitic Stainless Steel Piping, Section XI, Division 1.
N–839	7 (2013 Edition)	Similar and Dissimilar Metal Welding Using Ambient Temperature SMAW Temper Bead Technique Section XI, Division 1.
N–842	4 (2013 Edition)	Alternative Inspection Program for Longer Fuel Cycles Section XI, Division 1.
N–843	4 (2013 Edition)	Alternative Pressure Testing Requirements Following Repairs or Replacements for Class 1 Piping between the First and Second Injection Isolation Valves, Section XI, Division 1.
N–849	7 (2013 Edition)	In situ VT–3 Examination of Removable Core Support Structures Without Removal, Section XI.
N–853	6 (2015 Edition)	PWR Class 1 Primary Piping Alloy 600 Full Penetration Branch Connection Weld Metal Buildup for Material Susceptible to Primary Water Stress Corrosion Cracking, Section XI, Division 1.
N–854	1 (2015 Edition)	Alternative Pressure Testing Requirements for Class 2 and 3 Components Connected to the Class 1 Boundary, Section XI, Division 1.

OM Code

Code case No.	Edition [4]	Title
OMN–16 Revision 2	2017 Edition	Use of a Pump Curve for Testing.
OMN–21	2017 Edition	Alternative Requirements for Adjusting Hydraulic Parameters to Specified Reference Points.

List of Subjects in 10 CFR Part50

Administrative practice and procedure, Antitrust, Classified information, Criminal penalties, Education, Fire prevention, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

For the reasons set forth in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC proposes to adopt the following amendments to 10 CFR part 50:

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

Authority: Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy

[4] The column labelled "Edition" in this table refers to the point in time a Code Case was issued. For example, an entry associated with the 2017 Edition means the Code Case was issued at the same time as the 2017 Edition of the code.

Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96–295, 94 Stat. 783.

■ 2. In § 50.55a:
■ a. Remove and reserve paragraphs (a)(1)(iii)(E) and (G);
■ b. Revise paragraph (a)(3) introductory text;
■ c. In paragraph (a)(3)(i), remove the phrase ''Revision 37'' and add in its place the phrase ''Revision 38'';
■ d. In paragraph (a)(3)(ii), remove the phrase ''Revision 18'' and add in its place the phrase ''Revision 19'';
■ e. In paragraph (a)(3)(iii), remove the phrase ''Revision 2'' and add in its place the phrase ''Revision 3'';
■ f. Remove paragraph (b)(2)(xxxvii); and
■ g. Remove and reserve paragraph (b)(3)(x).

The revision reads as follows:

§ 50.55a Codes and standards.

(3) *U.S. Nuclear Regulatory Commission (NRC) Public Document Room,* 11555 Rockville Pike, Rockville, Maryland 20852; telephone: 1–800–397–4209; email: *pdr.resource@nrc.gov; http://www.nrc.gov/reading-rm/doc-collections/reg-guides/.* The use of Code Cases listed in the NRC regulatory guides in paragraphs (a)(3)(i) through (iii) of this section is acceptable with the specified conditions in those guides when implementing the editions and addenda of the ASME BPV Code and ASME OM Code incorporated by reference in paragraph (a)(1) of this section.

* * * * *

Dated at Rockville, Maryland, this 26th day of July, 2018.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–17650 Filed 8–15–18; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0710; Product Identifier 2018–NM–079–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 BD–700–1A10 and BD–700–1A11 airplanes. This proposed AD was prompted by in-service findings that a cotter pin at the main fitting joint of the nose landing gear (NLG) retraction actuator to the NLG strut showed evidence of shearing after a NLG retraction-extension cycling. This proposed AD would require revising the maintenance or inspection program, as applicable, a general visual inspection for damage of a certain cotter pin present on certain configurations of the NLG strut assembly and for the modification number shown on the identification plate for the NLG strut, and modification of the NLG retraction actuator hardware on any damaged NLG strut assembly. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 1, 2018.

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; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0710; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7318; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

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–2018–0710; Product Identifier 2018–NM–079–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of 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 NPRM.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2018–05, dated January 23, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. The MCAI states:

> There have been in-service findings whereby the cotter pin at the retraction actuator to nose landing gear (NLG) strut main fitting was observed to be damaged after a NLG retraction-extension cycling. This condition could lead to a loss of hardware and result in an actuator disconnect resulting in a failure to retract or extend, or in an undamped freefall of the NLG [which could adversely affect the airplane's continued safe flight and landing].
>
> This AD mandates a revision to the approved maintenance schedule. This AD also mandates a visual inspection of the cotter pin for certain configurations of NLG strut assembly, and if found damaged, the incorporation of a modification which introduces a new castellated nut, spacer, end plate and sleeve to the NLG retraction actuator to main fitting joint.

The required actions also include a prohibition on accomplishing Liebherr-Aerospace Service Bulletin 1285A–32–07 at any revision level on the NLG strut assemblies of any Bombardier, Inc., Model BD–700–1A10 or BD–700–1A11 airplane in order to prevent the installation of the affected configuration of the NLG strut assembly. 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–2018–0710.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information, which describes procedures for a general visual inspection for damage of the cotter pin retaining the bolt that secures the main fitting joint of the NLG retraction actuator to the NLG strut and for the modification number shown on the identification plate for the NLG strut, and modifying the attachment hardware that secures the NLG retraction actuator to the NLG strut. These documents are distinct since they apply to different airplane models in different configurations.

- Bombardier Service Bulletin 700–1A11–32–022, Revision 2, dated November 6, 2017.
- Bombardier Service Bulletin 700–32–035, Revision 2, dated November 6, 2017.
- Bombardier Service Bulletin 700–32–5011, Revision 2, dated November 6, 2017.
- Bombardier Service Bulletin 700–32–6011, Revision 2, dated November 6, 2017.

Bombardier has issued the following service information, which identifies airworthiness limitation tasks for restoration of the main fitting joint of the NLG retraction actuator to the NLG strut. These documents are distinct since they apply to different airplane models in different configurations.

- Task 32–33–01–111 of Bombardier Global 5000 BD–700 Time Limits/Maintenance Checks, Revision 19, dated November 13, 2017, for Bombardier Model BD–700–1A11 airplanes.
- Task 32–33–01–111 of Bombardier Global 5000 GL 5000 Featuring Global Vision Flight Deck—Time Limits/Maintenance Checks, Revision 9, dated November 13, 2017, for Bombardier Model BD–700–1A11 airplanes.
- Task 32–33–01–111 of Bombardier Global Express BD–700 Time Limits/Maintenance Checks, Revision 28, dated November 13, 2017, for Bombardier Model BD–700–1A10 airplanes.
- Task 32–33–01–111 of Bombardier Global Express XRS BD–700 Time Limits/Maintenance Checks, Revision 15, dated November 13, 2017, for Bombardier Model BD–700–1A10 airplanes.
- Task 32–33–01–111 of Bombardier Global 6000 GL 6000 Time Limits/Maintenance Checks, Revision 9, dated November 13, 2017, for Bombardier Model BD–700–1A10 airplanes.

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

FAA's Determination

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 the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

This proposed 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 according to paragraph (l)(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.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously.

Explanation of Service Bulletin Effectivity

Where Bombardier Service Bulletin 700–1A11–32–022 erroneously specifies ''BD–700–1A10 aircraft'' in paragraph 1.A, ''Effectivity,'' the effectivity should be Bombardier, Inc., Model ''BD–700–1A11 airplanes'' instead.

Costs of Compliance

We estimate that this proposed AD affects 60 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$0	$340	$20,400

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

We estimate the following costs to do the necessary on-condition action that would be required based on the results of any required actions. We have no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTION

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$10,487	$10,572

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all known costs in our cost estimate.

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.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

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–2018–0710; Product Identifier 2018–NM–079–AD.

(a) Comments Due Date

We must receive comments by October 1, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category, serial numbers 9002 through 9638 inclusive and 9998.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by in-service findings that a cotter pin at the main fitting joint of the nose landing gear (NLG) retraction actuator to the NLG strut showed evidence of shearing after a NLG retraction-extension cycling. We are issuing this AD to address this condition which could lead to a loss of hardware and result in an actuator disconnect and the NLG failing to retract or extend, or in an undamped freefall, which could adversely affect the airplane's continued safe flight and landing.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 30 days after the effective date of this AD: Revise the maintenance or inspection program, as applicable, to incorporate the information specified in Airworthiness Limitation (AWL) Task 32–33–01–111, ''Restoration of the Nose Landing Gear Shock-Strut Assembly to Retraction-Actuator Main-Fitting Joint,'' as specified in the applicable time limits/maintenance checks (TLMC) manual identified in figure 1 to paragraph (g) of this AD, as applicable. The initial compliance time for doing the task is at the time specified in the applicable TLMC manual listed in figure 1 to paragraph (g) of this AD, or within 30 days after the effective date of this AD, whichever occurs later.

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Figure 1 to paragraph (g) of this AD – *Acceptable Time Limits/Maintenance Checks Manuals*

Airplane Models	Time Limits/Maintenance Checks (TLMC) Manual Number	Acceptable Revision Number	Date of Issue
BD-700-1A10	Bombardier Global Express BD-700 (“GL 700 TLMC”)	Revision 28	November 13, 2017
	Global Express XRS BD-700 (“GL XRS TLMC”)	Revision 15	November 13, 2017
	Global 6000 GL 6000 (“GL 6000 TLMC”)	Revision 9	November 13, 2017
BD-700-1A11	Global 5000 BD-700 (“GL 5000 TLMC”)	Revision 19	November 13, 2017
	Global 5000 GL 5000 Featuring Global Vision Flight Deck (“GL 5000 GVFD TLMC”)	Revision 9	November 13, 2017

(h) Inspection and Modification

(1) Except for airplanes identified in paragraph (h)(2) of this AD: Within 6 months from the effective date of this AD, perform a general visual inspection for damage of the cotter pin retaining the bolt that secures the NLG retraction actuator to the NLG strut, and a general visual inspection of the modification number shown on the identification plate for the NLG strut, and, if applicable, mark the correct modification number on the identification plate of the NLG strut, in accordance with the applicable Bombardier service information as shown in figure 2 to paragraph (h) of this AD. If damage to the cotter pin is present: Before further flight, perform the modification of the NLG attachment joint in accordance with the Accomplishment Instructions of the applicable Bombardier service information as shown in figure 2 to paragraph (h) of this AD.

(2) The actions specified in paragraph (h)(1) of this AD are not required for airplanes that do not have the NLG configuration specified in Paragraph 1.A, ‘‘Effectivity’’ of the applicable Bombardier service information as shown in figure 2 to paragraph (h) of this AD.

Figure 2 to paragraph (h) of this AD – *Service Bulletins for Inspection and Modification*

Airplane Model	Bombardier Service Bulletin	Date
BD-700-1A10	700-32-035, Revision 2	November 6, 2017
	700-32-6011, Revision 2	November 6, 2017
BD-700-1A11	700-1A11-32-022, Revision 2	November 6, 2017
	700-32-5011, Revision 2	November 6, 2017

(i) No Alternative Actions 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) or intervals, may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(j) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the service information specified in figure 3 to paragraph (j)(1) of this AD.

Figure 3 to paragraph (j)(1) of this AD - *Acceptable Temporary Revisions (TR) by Airplane Model*

Airplane Models	TLMC Manual Number	Acceptable TR	Date of Issue
BD-700-1A10	GL 700 TLMC	TR-5-2-46	May 19, 2015
	GL XRS TLMC	TR-5-2-9	May 19, 2015
	GL 6000 TLMC	TR-5-2-13 and TR-5-2-14	May 19, 2015
BD-700-1A11	GL 5000 TLMC	TR-5-2-15	May 19, 2015
	GL 5000 GVFD TLMC	TR-5-2-13 and TR-5-2-14	May 19, 2015

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(2) This paragraph provides credit for actions required by paragraph (h)(1) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (j)(2)(i) through (j)(2)(viii) of this AD, provided that it can be confirmed that at least 25 NLG extension-retraction cycles had been completed on the NLG at the time of completion of the Accomplishment Instructions of the applicable service information specified in paragraphs (j)(2)(i) through (j)(2)(viii) of this AD; and provided neither the NLG nor the NLG retract actuator has been replaced or modified since the completion of the Accomplishment Instructions of the applicable service information specified in paragraphs (j)(2)(i) through (j)(2)(viii) of this AD.

(i) Bombardier Service Bulletin 700–1A11–32–022, dated May 13, 2015.

(ii) Bombardier Service Bulletin 700–1A11–32–022, Revision 1, dated August 26, 2015.

(iii) Bombardier Service Bulletin 700–32–035, dated May 13, 2015.

(iv) Bombardier Service Bulletin 700–32–035, Revision 1, dated August 26, 2015.

(v) Bombardier Service Bulletin 700–32–5011, dated May 13, 2015.

(vi) Bombardier Service Bulletin 700–32–5011, Revision 1, dated August 26, 2015.

(vii) Bombardier Service Bulletin 700–32–6011, dated May 13, 2015.

(viii) Bombardier Service Bulletin 700–32–6011, Revision 1, dated August 26, 2015.

(k) Service Information Prohibition

As of the effective date of this AD, no person may incorporate Liebherr-Aerospace Service Bulletin 1285A–32–07 at any revision level on the NLG strut assemblies of any Bombardier, Inc., Model BD–700–1A10 or BD–700–1A11 airplane.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as

appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 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 Branch, 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.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2018–05, dated January 23, 2018, 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–2018–0710.

(2) For more information about this AD, contact Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7318; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on August 7, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–17622 Filed 8–15–18; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0758; Product Identifier 2018–NM–093–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS 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 Airbus SAS Model A350–941 airplanes. This proposed AD was prompted by a review of the Airbus A350 structure design principles database for type definition that revealed that the balancer fitting part, installed on the tail cone, on a certain frame (FR) has several corrosion-resistant stainless steel nuts that do not meet the requirements for protection against corrosion. This proposed AD would require application of a new additional overcoat sealant and elastic varnish on the affected nuts and fasteners. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 1, 2018.

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 Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0758; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

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–2018–0758; Product Identifier 2018–NM–093–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of 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 NPRM.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2018–0123, dated June 4, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A350–941 airplanes. The MCAI states:

Following a complete review of the Airbus A350 structure design principles database for type definition, it was revealed that the balancer fitting part, installed on the tail cone, lower section of Frame (FR) 103, has several corrosion resistant stainless steel nuts installed on elementary aluminium parts, which does not meet the requirements for protection against corrosion.

This condition, if not corrected, could reduce the structural integrity of the aeroplane.

To address this unsafe condition, Airbus developed production mod 110319 to improve protection against corrosion, and issued the SB [Airbus Service Bulletin A350–53–P024] to provide modification instructions for in-service pre-mod aeroplanes. At the same time the production mod 110348 is equivalent to in-service solution.

For the reasons described above, this [EASA] AD requires a modification, adding new additional overcoat sealant and elastic varnish on the affected nuts and fastener heads.

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–2018–0758.

Related Service Information Under 1 CFR Part 51

Airbus SAS has issued Service Bulletin A350–53–P024, dated April 3, 2018. This service information describes procedures for the application of a new additional overcoat sealant and elastic varnish on the affected nuts and fasteners. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA's Determination

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 the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 7 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × $85 per hour = $170	$500	$670	$4,690

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all known costs in our cost estimate.

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.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

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):

Airbus SAS: Docket No. FAA–2018–0758; Product Identifier 2018–NM–093–AD.

(a) Comments Due Date

We must receive comments by October 1, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, except those on which Airbus modification 110319 or Airbus modification 110348 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a review of the Airbus A350 structure design principles database for type definition that revealed that the balancer fitting part, installed on the tail cone, lower section of frame (FR) 103, has several corrosion-resistant stainless steel nuts installed on elementary aluminum parts, and this configuration does not meet the requirements for protection against corrosion. We are issuing this AD to address this condition, which if not corrected, could reduce the structural integrity of the airplane.

(f) Compliance

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

(g) Required Action

Within 72 months since the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness, apply additional overcoat sealant and elastic varnish to the fastener heads and the anchor nuts of the balancer fitting at FR 103, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A350–53–P024, dated April 3, 2018.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (i)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

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

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2018–0123, dated June 4, 2018, 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–2018–0758.

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

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on August 9, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–17646 Filed 8–15–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0711; Product Identifier 2018–NM–062–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt an airworthiness directive (AD) for all The Boeing Company Model 757–200 series airplanes. This proposed AD was prompted by reports of uncommanded movement of the captain's and first officer's seats. This proposed AD would require, for the captain's and first officer's seats, repetitive horizontal actuator identifications, repetitive checks of the horizontal movement system (HMS), a detailed inspection of the HMS, as applicable, and applicable on-condition actions. This proposed AD would also require a general visual inspection to determine seat part numbers of the captain's and first officer's seats, a cable adjustment check on seats with certain seat part numbers, and applicable on-condition actions. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 1, 2018.

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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0711.

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–2018–0711; 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 NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Myra Kuck, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5316; fax: 562–627–5210; email: *Myra.J.Kuck@faa.gov.*

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–2018–0711; Product Identifier 2018–

NM–062–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of 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

We received reports indicating uncommanded movement of the captain's and first officer's seats. In one instance, a Boeing Model 777 airplane operator reported that the captain's seat could not be locked in position after the horizontal position of the seat was adjusted in flight. The seat became unlocked from the track and moved freely forward and aft, and the first officer assumed the controls for approach and landing. An inspection found the horizontal actuator output shaft on the seat had broken, resulting in an inability to prevent forward and aft seat movement or lock the seat in position. A broken horizontal actuator output shaft may be the result of high loads beyond the design limits, a stalled motor due to high mechanical resistance during operation of the seat, or foreign object debris in the seat tracks.

Because Boeing Model 757 airplanes use the same seats in the flight deck, we are proposing this AD to prevent uncommanded movement of the captain's and first officer's seats, which could lead to reduced controllability of the airplane. We plan similar actions for other Boeing airplanes using the same seats in the flight deck.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 757–25–0308, Revision 1, dated June 7, 2018. This service information describes procedures for repetitive horizontal actuator identifications, repetitive checks of the HMS, a detailed inspection of the HMS, as applicable, and applicable on-condition actions. On-condition actions include an overhaul of the HMS and checks of the HMS.

We reviewed Boeing Special Attention Service Bulletin 757–25–0309, Revision 1, dated July 2, 2018. This service information describes procedures for a general visual inspection to determine the seat part numbers on the captain's and first officer's seats, and, for seats with certain part numbers, a manual override cable adjustment check of the captain's and first officer's seats, and applicable on-condition actions. On-condition actions include moving the adjustment nut, tightening the lock nut, and readjusting the control lever.

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

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishment of the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–25–0308, Revision 1, dated June 7, 2018, and Boeing Special Attention Service Bulletin 757–25–0309, Revision 1, dated July 2, 2018, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD, and except as explained under ''Differences Between Proposed AD and Service Information'' in this NPRM.

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0711.

Differences Between Proposed AD and Service Information

Although Boeing Special Attention Service Bulletin 757–25–0309, Revision 1, dated July 2, 2018, recommends accomplishing the actions ''within 72 months,'' we have determined that this compliance time will not ensure that the identified unsafe condition is addressed in a timely manner. In developing an appropriate compliance time for this AD, we considered the manufacturer's recommendation, as well as the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modifications. In light of all of these factors, we find a compliance time of 36 months for completing the required actions is warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with Boeing.

Costs of Compliance

We estimate that this proposed AD affects 17 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Identification/Check	Up to 11 work-hours × $85 per hour = $935 per identification/check cycle.	Up to $4,820	Up to $5,755 per identification/check cycle.	Up to $97,835 per identification/check cycle.
Inspection	Up to 1 work-hour × $85 per hour = $85.	$0	Up to $85	Up to $1,445.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Certain configurations of captain's and first officer's seats may require special tooling to align the seats. Special tooling for one set of captain's and first officer's seats will cost $22,000, and a certain other set will cost $23,000. If an operator owns both combinations of seats, the special tooling will cost up to $45,000 per operator.

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.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

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):

The Boeing Company: Docket No. FAA–2018–0711; Product Identifier 2018–NM–062–AD.

(a) Comments Due Date

We must receive comments by October 1, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 757–200 series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by reports of uncommanded movement of the captain's and first officer's seats. We are issuing this AD to address the uncommanded movement of the captain's or first officer's seat, which could lead to reduced controllability of the airplane.

(f) Compliance

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

(g) Identification, Check, Inspection, On-Condition Actions (Includes Overhaul of Horizontal Movement System) and Repetitive Actions

For airplanes identified in Boeing Special Attention Service Bulletin 757–25–0308, Revision 1, dated June 7, 2018: Except as required by paragraph (h) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 757–25–0308, Revision 1, dated June 7, 2018, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–25–0308, Revision 1, dated June 7, 2018.

(h) Exceptions To Service Information Specifications

For purposes of determining compliance with the requirements of this AD: Where Boeing Special Attention Service Bulletin 757–25–0308, Revision 1, dated June 7, 2018, uses the phrase ''the original issue date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

(i) Seat Inspection, Adjustment Check for Certain Seats, and On-Condition Actions

For airplanes identified in Boeing Special Attention Service Bulletin 757–25–0309, Revision 1, dated July 2, 2018: Within 36 months after the effective date of this AD, do all applicable actions identified as RC in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–25–0309, Revision 1, dated July 2, 2018. A review of the airplane maintenance records may be used for the seat inspection if the part number can be conclusively determined from that review.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as RC, the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

(1) For more information about this AD, contact Myra Kuck, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5316; fax: 562–627–5210; email: *Myra.J.Kuck@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on August 7, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–17621 Filed 8–15–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 91, 92, 570, 574, 576, and 903

[Docket No. FR–6123–A–01]

RIN 2529–AA97

Affirmatively Furthering Fair Housing: Streamlining and Enhancements

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking (ANPR) invites public comment on amendments to HUD's affirmatively furthering fair housing (AFFH) regulations. The goal of the regulations is to provide HUD program participants with a specific planning approach to assist them in meeting their statutory obligation to affirmatively further the purposes and policies of the Fair Housing Act. HUD is committed to its mission of achieving fair housing opportunity for all, regardless of race, color, religion, national origin, sex, disability, or familial status. However, HUD's experience over the three years since the newly-specified approach was promulgated demonstrates that it is not fulfilling its purpose to be an efficient means for guiding meaningful action by program participants. Accordingly, HUD has determined that a new approach towards AFFH is required. As HUD begins the process of developing a proposed rule to amend the existing AFFH regulations, it is soliciting public comment on changes that will: Minimize regulatory burden while more effectively aiding program participants to plan for fulfilling their obligation to affirmatively further the purposes and policies of the Fair Housing Act; create a process that is focused primarily on accomplishing positive results, rather than on performing analysis of community characteristics; provide for greater local control and innovation; seek to encourage actions that increase housing choice, including through greater housing supply; and more efficiently utilize HUD resources. HUD is also reviewing comments submitted in response to the withdrawal of the Local Government Assessment Tool and will consider those comments during HUD's consideration of potential changes to the AFFH regulations.

DATES: *Comment Due Date:* October 15, 2018.

ADDRESSES: Interested persons are invited to submit comments to the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10276, Washington, DC 20410–0001. Communications should refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' section. There are two methods for submitting public comments.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at all federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD and enables HUD to make comments immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Comments. All comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Krista Mills, Deputy Assistant Secretary, Office of Policy, Legislative Initiatives, and Outreach, Office Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW, Room 5246, Washington, DC 20410; telephone number 202–402–6577. Individuals with hearing or speech impediments may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On July 16, 2015, HUD published in the **Federal Register** its Affirmatively Furthering Fair Housing (AFFH) final rule.[1] The principal AFFH regulations are codified in 24 CFR part 5, subpart A, with other AFFH related regulations codified in 24 CFR parts 91, 92, 570, 574, 576, and 903. The stated purpose of the AFFH final rule was to provide HUD program participants with a revised planning approach to assist them in meeting their legal obligation to affirmatively further the purposes and policies of the Fair Housing Act. Since issuance of the final rule, however, HUD has concluded that the current regulations are ineffective in helping program participants to meet this obligation. The highly prescriptive regulations give participants inadequate autonomy in developing fair housing goals as suggested by principles of federalism. Additionally, the current regulations are ineffective in addressing the lack of adequate housing supply, which has particular adverse impact on protected classes under the Fair Housing Act. Finally, evidence from

[1] 80 FR 42357.

peer-reviewed literature indicates that the positive outcomes of policies focused on deconcentrating poverty are likely limited to certain age and demographic groups [2] and are difficult to implement at scale and without disrupting local decision making. HUD reached these determinations for the following reasons:

1. *Ineffectiveness of assessment tools.* Under the AFFH rule, HUD program participants are required to use an Assessment Tool to conduct and submit an Assessment of Fair Housing (AFH) to HUD. Because of the variations in the HUD program participants subject to the AFFH rule, HUD went through a process to develop three separate assessment tools: One for local governments, one for public housing agencies (PHAs), and one for States and Insular Areas.

There are currently no approved assessment tools that are available for program participants to use. The different assessment tools are unavailable for different reasons. A final State and Insular Area Assessment Tool has not yet been developed by HUD. In the case of the Assessment Tool for use by PHAs, HUD published a **Federal Register** notice on January 13, 2017,[3] announcing that the Assessment Tool was not yet available for use by PHAs because the HUD data needed to make the Assessment Tool workable was not yet available. HUD announced the availability of a Local Government Assessment Tool in a **Federal Register** notice published on December 31, 2015 [4] and renewal of the Tool in a **Federal Register** notice published on January 13, 2017.[5]

Since publication of the January 13, 2017, notice, HUD became aware of significant deficiencies in the Local Government Assessment Tool impeding completion and acceptance of meaningful assessments by program participants. Accordingly, HUD withdrew the Local Government Assessment Tool in a **Federal Register** notice published on May 23, 2018.[6] As more fully explained in the May 23, 2018, withdrawal notice, HUD's decision was informed by its review of the initial round of AFH submissions that were developed using the Local Government Assessment Tool. This review led HUD to conclude that the Tool is unworkable based upon: (1) The high failure rate from the initial round of submissions; and (2) the level of technical assistance HUD provided to this initial round of 49 AFHs, which cannot be scaled up to accommodate the increase in the number of local government program participants with AFH submission deadlines in 2018 and 2019. Specifically, 63% of the initial 49 AFH submissions (31/49) were not accepted on initial submission. HUD returned 35% of these (17/49) as unacceptable. Many other AFH submissions (28% or 14/49) were accepted only after the program participants submitted revisions and additional information in the form of addendums in response to HUD's technical assistance. Interested readers are referred to the May 23, 2018, **Federal Register** notice for additional explanation regarding HUD's withdrawal of the Local Government Assessment Tool.

2. *Public comments on HUD regulatory reform efforts.* The request for comments contained in this ANPR is also consistent with HUD's efforts to carry out the Administration's regulatory reform efforts. On May 15, 2017, HUD published a **Federal Register** notice consistent with Executive Orders 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' and 13777, ''Enforcing the Regulatory Reform Agenda,'' inviting public comments to assist HUD in identifying existing regulations that may be outdated, ineffective, or excessively burdensome.[7] HUD received 299 comments in response to the Notice, and 136 (45% of the total) discussed the AFFH rule.

While some of the comments expressed support for the AFFH rule, most of the comments were critical of the rule and cited its complexity and the costs associated with completing an AFH. The commenters wrote that the final rule fails to consider critical factors for program participants, such as the scarcity of available resources and other program priorities. Many of these commenters complained that the estimates contained in the final rule regarding the amount of time it would take to complete an AFH were unrealistically low. Small PHAs, in particular, wrote that compliance with the rule would result in their incurring large expenses. Other commenters complained that the rule is overly prescriptive. Still others noted deficiencies with the data program participants are required to rely on in completing their AFHs.

II. This Advance Notice of Proposed Rulemaking

As HUD begins the process of developing a proposed rule to amend the existing AFFH regulations, it is soliciting public comment on changes that will: (1) Minimize regulatory burden while more effectively aiding program participants to meet their legal obligations; (2) create a process that is focused primarily on accomplishing positive results, rather than on performing analysis of community characteristics; (3) provide for greater local control and innovation; (4) seek to encourage actions that increase housing choice, including through greater housing supply; and (5) more efficiently utilize HUD resources.

While the following list is not exhaustive, HUD is particularly interested in comments on the following questions:

1. What type of community participation and consultation should program participants undertake in fulfilling their AFFH obligations? Do the issues under consideration in affirmatively furthering fair housing merit separate, or additional, public participation and consultation procedures than those already required of program participants in preparing their annual plans for housing and community development (*i.e.,* the Consolidated Plan, Annual Action Plan, or PHA Plan)? Conversely, should public input on AFFH be included as part of the Consolidated Plan/PHA Plan public involvement process?

2. How should the rule weigh the costs and benefits of data collection and analysis? Should the proposed rule allow program participants to develop or use the data of their choice? Alternatively, should HUD require the use of a uniform data set by all program participants in complying with their AFFH obligation? Should it vary by the nature of the program participant? Instead of a data-centric approach, should jurisdictions be permitted to rely upon their own experiences? If the latter, how should HUD assess this more qualitative approach?

3. How should PHAs report their AFFH plans and progress? Should jurisdictions be required to provide a detailed report of the analysis performed or only summarize the goals? How often should program participants be required to report on their AFFH efforts? Should the proposed rule retain or revise the current timeframes for required AFFH submissions? Should program participants continue reporting annually on their AFFH actions and results in their program plans and

[2] Chetty, Raj, Nathaniel Hendren, and Lawrence Katz. 2016. ''The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Project.'' American Economic Review 106 (4).

[3] 82 FR 4373.

[4] 80 FR 81840.

[5] 82 FR 4388.

[6] 83 FR 23922.

[7] 82 FR 22344.

annual performance reports or, given the long-term nature of many AFFH goals, should the reporting period be longer? Should planning and/or results be integrated into existing report structures, such as Consolidated Plans and Consolidated Annual Performance and Evaluation Reports (CAPERs), or utilize an alternative structure?

4. Should the proposed rule specify the types of obstacles to fair housing that program participants must address as part of their AFFH efforts, or should program participants be able to determine the number and types of obstacles to address? Should HUD incentivize program participants to collaborate regionally to identify and address obstacles to affirmatively furthering fair housing, without holding localities accountable for areas outside of their control? Should HUD incentivize grantees and PHAs to collaborate in the jurisdiction and the region to remove fair housing obstacles? What are examples of obstacles that the AFFH regulations should seek to address? How might a jurisdiction accurately determine itself to be free of material obstacles?

5. How much deference should jurisdictions be provided in establishing objectives to address obstacles to identified fair housing goals, and associated metrics and milestones for measuring progress?

6. How should HUD evaluate the AFFH efforts of program participants? What types of elements should distinguish acceptable efforts from those that should be deemed unacceptable? What should be required of, or imposed upon, jurisdictions with unacceptable efforts (other than potential statutory loss of Community Development Block Grant, HOME, or similar funding sources)? How should HUD address PHAs whose efforts to AFFH are unacceptable?

7. Should the rule specify certain levels of effort on specific actions that will be deemed to be in compliance with the obligation to affirmatively further the purposes and policies of the Fair Housing Act (*i.e.,* ''safe harbors''), and if so, what should they be?

8. Are there any other revisions to the current AFFH regulations that could help further the policies of the Fair Housing Act, add clarity, reduce uncertainty, decrease regulatory burden, or otherwise assist program participants in meeting their AFFH obligations?

III. Findings and Certifications

Environmental Impact

This ANPR is exclusively concerned with nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), it is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321–4347).

Regulatory Review—Executive Orders 12866 and 13563

Per Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This ANPR was reviewed by OMB and determined to likely result in a ''significant regulatory action,'' as defined in section 3(f) of Executive Order 12866.

Dated: August 9, 2018.

Anna Maria Farías,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2018–17671 Filed 8–15–18; 8:45 am]

BILLING CODE 4210–67–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0212; FRL–9982–29—Region 5]

Air Plan Approval; Wisconsin; Reasonable Further Progress Plan and Other Plan Elements for the Moderate Nonattainment Chicago Area for the 2008 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Wisconsin State Implementation Plan (SIP) to meet the base year emissions inventory, reasonable further progress (RFP), RFP contingency measure, nitrogen oxides (NO_X) reasonably available control technology (RACT), and motor vehicle inspection and maintenance (I/M) requirements of the Clean Air Act (CAA) for the Wisconsin portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin nonattainment area (Chicago area) for the 2008 ozone National Ambient Air Quality Standards (NAAQS or standards). EPA is also proposing to approve the 2017 and 2018 transportation conformity motor vehicle emissions budgets (MVEBs) for the Wisconsin portion of the Chicago area for the 2008 ozone NAAQS. EPA is proposing to approve this SIP revision pursuant to section 110 and part D of the CAA and EPA's regulations because it satisfies the emission inventory, RFP, RFP contingency measure, NO_X RACT, I/M, and transportation conformity requirements for the Wisconsin portion of the Chicago area, which is classified as moderate nonattainment for the 2008 ozone NAAQS.

DATES: Comments must be received on or before September 17, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2017–0212, at *http://www.regulations.gov,* or via email to *Aburano.Douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jenny Liljegren, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6832, *Liljegren.Jennifer@epa.gov*.

SUPPLEMENTARY INFORMATION:

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What is the background for this action?

A. Background on the 2008 Ozone NAAQS

On March 27, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm).[1] Promulgation of a revised NAAQS triggers a requirement for EPA to designate areas of the country as nonattainment, attainment, or unclassifiable for the standards. For the ozone NAAQS, this also involves classifying any nonattainment areas at the time of designation.[2] Ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's ''design value,'' which represents air quality in the area for the most recent 3 years). The classifications for ozone nonattainment areas are marginal, moderate, serious, severe, and extreme.[3]

Areas that EPA designates nonattainment for the ozone NAAQS are subject to certain requirements, including the general nonattainment area planning requirements of CAA section 172 and the ozone-specific nonattainment planning requirements of CAA section 182. Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For marginal areas, a state is required to submit a baseline emissions inventory, adopt provisions into the SIP requiring emissions statements from stationary sources in the area, and implement a nonattainment new source review (NSR) program for the relevant ozone NAAQS.[4] For moderate areas, a state needs to comply with the marginal area requirements, plus additional moderate area requirements, including the requirement to submit a modeled demonstration that the area will attain the NAAQS as expeditiously as practicable but no later than 6 years after designation, the requirement to submit an RFP plan, the requirement to adopt and implement certain emissions controls, such as RACT and I/M, and the requirement for greater emissions offsets for new or modified major stationary sources under the state's nonattainment NSR program.[5]

B. Background on the Chicago 2008 Ozone Nonattainment Area

On June 11, 2012,[6] EPA designated the Chicago area as a marginal nonattainment area for the 2008 ozone NAAQS. The Chicago area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties and part of Grundy and Kendall Counties in Illinois; Lake and Porter Counties in Indiana; and the eastern portion of Kenosha County in Wisconsin. On May 4, 2016,[7] pursuant to section 181(b)(2) of the CAA, EPA determined that the Chicago area failed to attain the 2008 ozone NAAQS by the July 20, 2015, marginal area attainment deadline and thus reclassified the area from marginal to moderate nonattainment. In that action, EPA established January 1, 2017, as the due date for all moderate area nonattainment plan SIP requirements applicable to newly reclassified areas.

II. EPA's Evaluation of Wisconsin's SIP Submission

Wisconsin submitted a SIP revision on April 17, 2017, and supplemental information on January 23, 2018, to address the moderate nonattainment area requirements for the Wisconsin portion of the Chicago area for the 2008 ozone NAAQS. The submission contained several nonattainment plan elements, including a revised 2011 base year emissions inventory for the two ozone-forming precursor pollutants, volatile organic compounds (VOC) and NO_X, a 15% RFP plan, a 3% RFP contingency measure plan, 2017 and 2018 VOC and NO_X MVEBs, and an enhanced I/M program certification. The submission also included an attainment demonstration, a nonattainment NSR certification, and a VOC RACT certification, which will be addressed in a separate action(s).

A. Revised 2011 Base Year Emissions Inventory

CAA sections 172(c)(3) and 182(a)(1), 42 U.S.C. 7502(c)(3) and 7511a(a)(1), require states to develop and submit, as SIP revisions, comprehensive, accurate, and complete emissions inventories for all areas designated as nonattainment for the ozone NAAQS. An emissions inventory for ozone is an estimation of actual emissions of VOC and NO_X from all sources located in the relevant designated nonattainment area. For the 2008 ozone NAAQS, EPA has recommended that states use 2011 as a base year for the emissions estimates.[8] EPA approved on March 7, 2016,[9] the 2011 base year emissions inventory, which Wisconsin submitted on November 14, 2014, for the Wisconsin portion of the Chicago area. In its April 17, 2017, submission, supplemented on January 23, 2018, Wisconsin included a revised 2011 base year emissions inventory submission. Relative to its original inventory, Wisconsin's revised 2011 base year emissions inventory modifies the emissions estimates for the point, on-road mobile, and non-road mobile sector, with emissions estimates for the area source sector remaining unchanged.

The methodology differences between Wisconsin's modified inventory and original inventory are summarized in Table 1 and the emissions difference are shown in Table 2. Relative to the original inventory, the modified inventory includes a more conservative (worst-case) emissions estimate from the one electric generating unit (EGU) in the Wisconsin portion of the area. Wisconsin estimated the modified inventory on-road emissions using the Motor Vehicle Emissions Simulator (MOVES) model version 2014a, whereas it estimated the original inventory on-road mobile sector emissions with an older version of the model—MOVES version 2010b. Finally, Wisconsin estimated the modified inventory non-road mobile sector ''MAR'' emissions, which include commercial marine, aircraft, and rail locomotive, using EPA's 2014 National Emissions Inventory (NEI) version 2 and it estimated the ''non-MAR'' emissions, which are the non-road mobile emissions sources excluding commercial marine, aircraft, and rail locomotive, using MOVES 2014a, whereas the original inventory relied on the older NEI version 1 and National Mobile Inventory Model (NMIM), respectively. Because the modifications to the original EPA-approved inventory are based on updated resources and information as summarized above, EPA finds the updated inventory approvable and is proposing to approve the revised 2011 base year emissions inventory as a revision to the Wisconsin SIP.

[1] 73 FR 16436.

[2] CAA sections 107(d)(1) and 181(a)(1).

[3] CAA section 181(a)(1).

[4] CAA section 182(a).

[5] CAA section 182(b).

[6] 77 FR 34221, effective July 20, 2012.

[7] 81 FR 26697.

[8] 78 FR 34178 at 34190.

[9] 81 FR 11673.

TABLE 1—METHODOLOGY DIFFERENCES BETWEEN WISCONSIN'S MODIFIED INVENTORY AND WISCONSIN'S ORIGINAL EPA-APPROVED INVENTORY

Sector	Original inventory	Modified inventory
Point	EGUs & non-EGUs: WI AEI for an average day in the third quarter.	EGUs: CAMD for a maximum day; non-EGU: WI AEI for an average day in the year.
Area	NEI v2	NEI v2.
Onroad	MOVES 2010b (Min/Max Temps: 70/94 °F)	MOVES 2014a (Min/Max Temps: 70/94 °F).
Nonroad	air & rail: NEI v1; com.mar.: LADCO/NEI v1; non-MAR: NMIM model.	MAR: NEI v2; non-MAR: MOVES 2014a.

CAMD = EPA's Clean Air Markets Division database, com.mar. = commercial marine, EGU = electric generating unit, MAR = commercial marine, aircraft and rail locomotive, MOVES = Motor Vehicle Emissions Simulator, NEI = National Emissions Inventory, NMIM = National Mobile Inventory Model, WI AEI = Wisconsin's Air Emissions Inventory (which is used to develop NEI emissions).

TABLE 2—EMISSIONS DIFFERENCES BETWEEN WISCONSIN'S MODIFIED INVENTORY AND WISCONSIN'S ORIGINAL EPA-APPROVED INVENTORY

Sector	VOC		NO_X	
	Approved inventory	RFP inventory	Approved inventory	RFP inventory
Point	0.70	0.72	8.80	11.16
Area	4.78	4.78	1.09	1.09
On-road	2.14	2.42	4.67	5.15
Non-road	2.42	1.51	2.33	2.07
Total	10.04	9.43	16.89	19.47

B. 15% RFP Plan and 3% Contingency Plan

The CAA requires that states with areas designated as nonattainment for ozone achieve RFP toward attainment of the ozone NAAQS. CAA section 172(c)(2) contains a general requirement that nonattainment plans must provide for emission reductions that meet RFP. For areas classified moderate and above, section 182(b)(1) imposes a more specific RFP requirement that a state had to meet through a 15% reduction in VOC emissions from the baseline anthropogenic emissions within 6 years after November 15, 1990. The state must meet the 15% requirement by the end of the 6-year period, regardless of when the nonattainment area attains the NAAQS. As with other nonattainment plan requirements for more recent iterations of the ozone NAAQS, EPA has promulgated regulations and guidance to interpret the statutory requirements of the CAA.

EPA's final rule to implement the 2008 ozone NAAQS (SIP Requirements Rule),[10] addressed, among other things, the RFP requirements as they apply to areas designated nonattainment and classified as moderate for the 2008 ozone NAAQS.[11] EPA interprets the 15% VOC emission reduction requirement in CAA section 182(b)(1) such that a state that has already met the 15% requirement for VOC for an area under either the 1-hour ozone NAAQS or the 1997 8-hour ozone NAAQS would not have to fulfill that requirement through reductions of VOC again. Instead, EPA is interpreting CAA section 172(c)(2) to require states with such areas to obtain 15% ozone precursor emission reductions (VOC and/or NO_X) over the first 6 years after the baseline year for the 2008 ozone NAAQS. Wisconsin previously met the 15% VOC reduction requirement of CAA section 182(b)(1) for Kenosha County for the 1-hour ozone NAAQS.[12] Therefore, the state may rely upon NO_X and/or VOC emissions reductions to meet the RFP requirement for the 2008 ozone NAAQS.

EPA's SIP Requirements Rule indicates the base year for the 2008 ozone NAAQS, for which areas were designated nonattainment effective July 20, 2012, can be 2011 or a different year of the states' choosing.[13] However, EPA required that states selecting a pre-2011 alternate baseline year must achieve 3% emission reductions each year after the initial 6-year period has concluded up to the beginning of the attainment year. For a multi-state area, states must agree on the same base year. Wisconsin, Illinois, and Indiana have all selected the EPA-recommended base year of 2011.

States may not take credit for VOC or NO_X reductions occurring from sources outside the nonattainment area for purposes of meeting the 15% RFP and 3% RFP requirements of CAA sections 172(c)(2), 182(b)(1) and (c)(2)(B). Wisconsin's 15% RFP represents emissions reductions which occurred in Wisconsin's portion of the nonattainment area in the time period from 2011 to 2017 thereby satisfying this requirement.

Except as specifically provided in CAA section 182(b)(1)(D) of the CAA, all state control measures approved into the SIP or Federal measures that provide emissions reductions that occur after the baseline emissions inventory year are creditable for purposes of the RFP requirements, provided that the reductions meet the standard

[10] 80 FR 12264.

[11] 80 FR 12264 at 12271 and 40 CFR 51.1110.

[12] For both the 1-hour ozone NAAQS and the 1997 ozone NAAQS, the entirety of Kenosha County was part of the 6-county Milwaukee nonattainment area. For the 2008 ozone NAAQS, Kenosha County (partial) is part of the Chicago nonattainment area, since the statistical area delineated based on U.S. Census Bureau data was updated to include Kenosha County as part of the Chicago statistical area. Wisconsin met the 15% VOC reduction requirement for the Milwaukee area for the 1-hour ozone NAAQS, which included the entirety of Kenosha County, therefore, the Wisconsin portion of the 2008 Chicago nonattainment area (Kenosha County inclusive and east of I–94) has already met the 15% VOC reduction requirement.

[13] *In South Coast Air Quality Management District* v. *EPA,* No. 15–1115, decided February 16, 2018, the United States Court of Appeals for the D.C. Circuit ruled to reverse the portion of the rule that allowed for alternate years. However, since all 3 states for this multi-state area chose the default of 2011 as the base year, the decision has no impact here.

requirements for creditability which include being enforceable, quantifiable, permanent, and surplus in terms of not having previously been counted toward RFP.

States must also include contingency measures in their nonattainment plans. The contingency measures required for areas classified as moderate and above under CAA sections 172(c)(9) and 182(c)(9) must provide for the implementation of specific measures if the area fails to attain or to meet any applicable RFP milestone. The state must submit these measures for approval by EPA into the SIP as adopted measures that would take effect without further rulemaking action by the state or EPA upon a determination that an area failed to attain or to meet the applicable milestone. Per EPA guidance for purposes of the ozone NAAQS, contingency measures should represent one year's worth of RFP progress, amounting to reductions of at least 3% of the baseline emissions inventory for the nonattainment area. The purpose of the contingency measures is to provide additional emission reductions in the event of a failure to attain or meet any applicable milestone, which would occur while the state is revising its SIP for the area.[14]

Regarding the contingency measures, EPA's prior guidance for purposes of the ozone NAAQS specifies that some portion of the contingency measures must include VOC reductions. This previous limitation is no longer necessary in all areas. In particular, EPA has concluded that states with nonattainment areas classified moderate and above that have already completed the initial 15% VOC reduction required by CAA section 182(b)(1)(A)(i), can meet the contingency measures requirement based entirely on NO_X controls if that is what the state's analyses have demonstrated would be most effective in bringing the area into attainment. There is no minimum VOC requirement. Also, EPA is continuing its long-standing policy that allows promulgated Federal measures to be used as contingency measures as long as they provide emission reductions in the relevant years in excess of those needed for attainment or RFP.[15]

Wisconsin submitted documentation showing that emission reductions in the Wisconsin portion of the Chicago area met the 15% RFP and 3% contingency requirements. Table 3 shows Wisconsin's estimated reductions from all sectors. Table 3 shows that the area's total VOC emissions decreased by 13.04% from 2011 to 2017 and 2.20% from 2017 to 2018. Table 3 shows the area's total NO_X emissions decreased by 15.41% from 2011 to 2017 and 2.25% from 2017 to 2018.

TABLE 3—WISCONSIN'S SOURCE SECTOR EMISSIONS IN TONS PER SUMMER DAY (tpsd) FOR EASTERN KENOSHA COUNTY

Sector	VOC			NO_X		
	2011	2017	2018	2011	2017	2018
Point	0.72	0.87	0.87	11.16	10.87	10.87
Area	4.78	4.77	4.74	1.09	1.08	1.08
Onroad	2.42	1.56	1.44	5.15	3.05	2.75
Nonroad	1.51	1.00	0.96	2.07	1.47	1.40
Total (% decrease from 2011–2017 and 2017–2018)	9.43	8.20 (13.04%)	8.02 (2.20%)	19.47	16.47 (15.41%)	16.10 (2.25%)

Wisconsin is able to meet the RFP and RFP contingency requirements entirely through Federal permanent and enforceable control measures within the mobile source sectors. Table 4 specifically contains the calculations showing Wisconsin's mobile source emissions reductions meet the RFP and RFP contingency requirements. The MOVES model for the on-road and non-road sectors assumed increases of 11–13% in vehicle or equipment population and usage while projecting a 34–41% reduction in ozone precursor emissions from 2011 to 2017. The estimated emissions reductions, therefore, cannot be attributed to reductions in source activity. Table 4 shows that of the 14.95% total VOC reductions from 2011–2018, 14.63%[16] came from the mobile sector. Table 4 also shows that of the 17.31% total NO_X reductions from 2011–2018, 15.77% came from the mobile sector. Wisconsin is choosing to count 5% VOC reductions and 10% NO_X reductions from 2011–2017 to meet the 15% RFP requirement, and 1% VOC reductions and 2% NO_X reductions from 2011–2018 to meet the 3% RFP contingency requirement. In other words, 6% VOC reductions and 12% NO_X reductions for a total of 18% to satisfy the 15% RFP and 3% RFP contingency requirements.

TABLE 4—WISCONSIN'S MOBILE SOURCE EMISSIONS REDUCTIONS FROM 2011–2017 ARE SUFFICIENT TO MEET THE 15% RFP REQUIREMENT AND WISCONSIN'S MOBILE SOURCE EMISSIONS REDUCTIONS FROM 2017–2018 ARE SUFFICIENT TO MEET THE 3% RFP CONTINGENCY REQUIREMENT FOR WISCONSIN'S PORTION OF THE CHICAGO AREA

	VOC			NO_X		
	2011	2017	2018	2011	2017	2018
Total emissions (tpsd)	9.43	8.20	8.02	19.47	16.47	16.10
% Reduction from base year emissions from 2011–2017 and 2017–2018, respectively		13.04%	1.91%		15.41%	1.90%

[14] 80 FR 12264 at 12285.

[15] 80 FR 12264 at 12285.

[16] Net the increase in emissions from the point source sector from 2011–2017 (see Table 3).

TABLE 4—WISCONSIN'S MOBILE SOURCE EMISSIONS REDUCTIONS FROM 2011–2017 ARE SUFFICIENT TO MEET THE 15% RFP REQUIREMENT AND WISCONSIN'S MOBILE SOURCE EMISSIONS REDUCTIONS FROM 2017–2018 ARE SUFFICIENT TO MEET THE 3% RFP CONTINGENCY REQUIREMENT FOR WISCONSIN'S PORTION OF THE CHICAGO AREA—Continued

	VOC			NO_X		
	2011	2017	2018	2011	2017	2018
Total		14.95%			17.31%	
Mobile sector (onroad + nonroad) emissions (tpsd)	3.93	2.56	2.40	7.22	4.52	4.15
% Reductions attributable to the mobile sector from base year emissions from 2011–2017[17] and 2017–2018, respectively		12.94%	1.70%		13.87%	1.90%
Total		14.63%			15.77%	
Wisconsin's choice for 15% RFP requirement and 3% RFP contingency requirement, respectively		5%	1%		10%	2%
Total		6%			12%	

The MOVES model incorporates a number of Federal emissions control programs into its projections. These emissions reduction measures are permanent and enforceable and are implemented everywhere, including in the nonattainment area. Tables 5 and 6 list the Federal permanent and enforceable control programs modeled by the MOVES model for the on-road sector and the non-road sector, respectively.

TABLE 5—PERMANENT AND ENFORCEABLE CONTROL PROGRAMS MODELED BY THE MOVES MODEL FOR THE ONROAD SECTOR

On-road control program	Pollutants	Model year *	Regulation
Passenger vehicles, SUVs, and light duty trucks—emissions and fuel standards.	VOC & NO_X	2004–09+ (Tier 2) 2017+ (Tier 3).	40 CFR Part 85 & 86.
Light-duty trucks and medium duty passenger vehicle—evaporative standards.	VOC	2004–10	40 CFR Part 86.
Heavy-duty highway compression engines	VOC & NO_X	2007+	40 CFR Part 86.
Heavy-duty spark ignition engines	VOC & NO_X	2005–08+	40 CFR Part 86.
Motorcycles	VOC & NO_X	2006–10 (Tier 1 & 2)	40 CFR Part 86.
Mobile Source Air Toxics—fuel formulation, passenger vehicle emissions, and portable container emissions.	Organic Toxics & VOC	2009–15 **	40 CFR Part 59, 80, 85, & 86.
Light duty vehicle corporate average fuel economy standards.	Fuel efficiency (VOC & NO_X).	2012–16 & 2017–25	40 CFR Part 600.

* The range in model years affected can reflect phasing of requirements based on engine size or initial years for replacing earlier tier requirements.
** The range in model years reflects phased implementation of fuel, passenger vehicle, and portable container emission requirements as well as the phasing by vehicle size and type.

TABLE 6—PERMANENT AND ENFORCEABLE CONTROL PROGRAMS MODELED BY THE MOVES MODEL OR CONSIDERED IN DEVELOPMENT OF THE MAR INVENTORY FOR THE NONROAD SECTOR

Nonroad control program *	Pollutants	Model year **	Regulation
Aircraft	VOC & NO_X	2000–2005+	40 CFR Part 87.
Compression Ignition	VOC & NO_X	2000–2015+ (Tier 4)	40 CFR Part 89 & 1039.
Large Spark Ignition	VOC & NO_X	2007+	40 CFR Part 1048.
Locomotive Engines	VOC & NO_X	2012–2014 (Tier 3) 2015+ (Tier 4).	40 CFR Part 1033.
Marine Compression Ignition	VOC & NO_X	2012–2018	40 CFR Part 1042.
Marine Spark Ignition	VOC & NO_X	2010+	40 CFR Part 1045.
Recreational Vehicle	VOC & NO_X	2006–2012 (Tier 1–3)	40 CFR Part 1051.
Small Spark Ignition Engine <19 Kw—emission standards.	VOC & NO_X	2005–2012 (Tier 2 & 3)	40 CFR Part 90 & 1054.

[17] Net the increase in emissions from the point source sector from 2011–2017 (see Table 3).

TABLE 6—PERMANENT AND ENFORCEABLE CONTROL PROGRAMS MODELED BY THE MOVES MODEL OR CONSIDERED IN DEVELOPMENT OF THE MAR INVENTORY FOR THE NONROAD SECTOR—Continued

Nonroad control program *	Pollutants	Model year **	Regulation
Small Spark Ignition Engine <19 Kw—evaporative standards.	VOC	2008–2016	40 CFR Part 1045, 54, & 60.

* Compression ignition applies to diesel non-road compression engines including engines operated in construction, agricultural, and mining equipment. Recreational vehicles include snowmobiles, off-road motorcycles, and all-terrain vehicles. Small spark ignition engines include engines operated in lawn and hand-held equipment.

** The range in model years affected can reflect phasing of requirements based on engine size or initial years for replacing earlier tier requirements.

These emissions reductions are surplus, meaning that Wisconsin has not previously claimed them for the purposes of other ozone NAAQS requirements. These emission reductions are also permanent, enforceable, and occurred during the 6-year attainment planning time period, which started with the 2011 base year. Wisconsin has demonstrated that these emissions reductions result in at least an 18% reduction (15% for RFP and 3% for the RFP contingency measure requirements, respectively) from the 2011 base year inventory emissions net of growth (and including a MVEB safety margin of 7.5% which will be discussed in more detail below). Thus, EPA is proposing to approve these emissions reductions as satisfying the 15% RFP and 3% RFP contingency measure requirements for the moderate nonattainment plan for the Wisconsin portion of the Chicago area for the 2008 ozone NAAQS.

EPA notes that the measures Wisconsin is relying upon to meet the contingency measures requirement are already implemented. Contingency measures may include Federal measures and local measures already scheduled for implementation, as long as the resulting emission reductions are in excess of those needed for attainment or to meet RFP in the nonattainment plan. EPA interprets the CAA not to preclude a state from implementing such measures before they are triggered by a failure to meet RFP or failure to attain. For more information on contingency measures, see the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (April 16, 1992, 57 FR 13498, 13510) and the 2008 Ozone Implementation Rule (March 6, 2015, 80 FR 12264, 12285).

The appropriateness of relying on already-implemented reductions to meet the contingency measures requirement has been addressed in two Federal circuit court decisions. *See Louisiana Environmental Action Network (LEAN)* v. *EPA,* 382 F.3d 575, 586 (5th Cir. 2004), *Bahr* v. *United States EPA,* 836 F.3d 1218 (9th Cir. 2016), *cert. denied,* 199 L. Ed. 2d 525, 2018 U.S. LEXIS 58 (Jan. 8, 2018). EPA believes that the language of section 172(c)(9) and 182(c)(9) is ambiguous with respect to this issue, and that it is reasonable for the agency to interpret the statutory language to allow approval of already implemented measures as contingency measures, so long as they meet other parameters such as providing excess emissions reductions that the state has not relied upon to meet RFP or for attainment in the nonattainment plan for the NAAQS at issue. Until the *Bahr* decision, under EPA's longstanding interpretation of CAA section 172(c)(9) and 182(c)(9), states could rely on control measures that were already implemented (so called ''early triggered'' contingency measures) as a valid means to meet the Act's contingency measures requirement. The Ninth Circuit decision in *Bahr* leaves a split among the Federal circuit courts, with the Fifth Circuit upholding the Agency's interpretation of section 172(c)(9) to allow early triggered contingency measures and the Ninth Circuit rejecting that interpretation. The Seventh Circuit in which Wisconsin is located has not addressed the issue, nor has the Supreme Court or any other circuit court other than the Fifth and Ninth.

Because there is a split in the Federal circuits on this issue, EPA expects that states located in circuits other than the Ninth may elect to rely on EPA's longstanding interpretation of section 172(c)(9) allowing early triggered measures to be approved as contingency measures, in appropriate circumstances. EPA's revised Regional Consistency regulations pertaining to SIP provisions authorize the Agency to follow this interpretation of section 172(c)(9) in circuits other than the Ninth. *See* 40 CFR part 56. To ensure that early triggered contingency measures appropriately satisfy all other relevant CAA requirements, the EPA will carefully review each such measure, and intends to consult with states considering such measures early in the attainment plan development process.

As shown above, the emissions reductions projected through 2018 are sufficient to meet the requirements for contingency measures, consistent with EPA's interpretation of the CAA to allow approval of already implemented control measures as contingency measures in states outside the Ninth Circuit. Therefore, we propose approval of the contingency measures submitted by the state in the nonattainment plan for the Wisconsin portion of the Chicago area.

C. Motor Vehicle Emissions Budgets

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the SIP. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. Under the CAA, states are required to submit, at various times, control strategy plans for nonattainment areas and maintenance plans for areas that qualify for redesignation to attainment of the ozone standards (maintenance areas).[18] These control strategy plans (including reasonable further progress plans and attainment plans for purposes of the ozone NAAQS) and maintenance plans must include MVEBs for the relevant criteria pollutant or its precursor pollutants (VOC and NO_X for ozone) to address pollution from on-road transportation sources. The MVEBs are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will meet an RFP milestone or provide for attainment or maintenance of the NAAQS.[19] The MVEB serves as a ceiling on emissions

[18] See the SIP requirements for the 2008 ozone standards in EPA's March 6, 2015 implementation rule (80 FR 12264).

[19] 40 CFR 93.101.

from an area's planned transportation system.[20]

When reviewing submitted control strategy or maintenance plan submissions, EPA must affirmatively find that the MVEBs contained therein are adequate for use in determining transportation conformity. Once EPA affirmatively finds that the submitted MVEBs are adequate for transportation purposes, then the MVEBs must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: public notification of a SIP submission; provision for a public comment period; and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004.[21] Additional information on the adequacy process for transportation conformity purposes is available in a June 30, 2003, proposed rule titled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes.''[22]

On January 16, 2015, Wisconsin submitted an early progress SIP submission with MVEBs for its portion of the Chicago 2008 ozone nonattainment area. On April 1, 2015, EPA found Wisconsin's MVEBs adequate for use in transportation conformity determinations.[23] As part of its nonattainment plan submitted on April 17, 2017, and supplemented on January 23, 2018, Wisconsin submitted new 2017 and 2018 NO_X and VOC MVEBs, which are lower than Wisconsin's previous MVEBs found adequate by EPA. Wisconsin's 2017 and 2018 MVEBs include a safety margin that Wisconsin applied in the form of a 7.5% greater mobile source activity than actually projected for 2017 and 2018, respectively. By applying this additional 7.5% on the front end of the analysis, Wisconsin's MOVES model output estimates of NO_X and VOC emissions for 2017 and 2018 include a built-in safety margin. States typically do this in an effort to accommodate future variations in travel demand models and vehicle miles traveled forecast. As shown in Table 4 above, Wisconsin has demonstrated that the Wisconsin portion of the Chicago area can meet the 15% RFP and 3% RFP contingency measure emission reduction requirements for the 2008 ozone NAAQS with mobile source (onroad + nonroad) emissions, which include an onroad budget of 1.56 tpsd VOC and 3.05 tpsd NO_X in 2017 and 1.44 tpsd VOC and 2.75 tpsd NO_X in 2018 (Table 7 below), and these emissions will remain under 2017 and 2018 RFP plus contingency measure target levels, even with the inclusion of the added 7.5% safety margin.

Wisconsin's 2017 and 2018 MVEBS were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The MVEBS were clearly identified and precisely quantified. These MVEBs, when considered together with all other emissions sources, are consistent with the 15% RFP and 3% contingency measure emission reduction requirements for the 2008 8-hour ozone NAAQS for this area. Therefore, EPA is proposing to approve Wisconsin's revised 2017 and 2018 MVEBs into the Wisconsin SIP. If EPA finalizes this approval, these MVEBs will replace the MVEBs previously established for the 2008 ozone NAAQS early progress plan and Wisconsin must use these updated MVEBs for future transportation conformity determinations for the Wisconsin portion of the Chicago nonattainment area. The 2017 and 2018 MVEBs are listed in Table 7.

TABLE 7—MOTOR VEHICLE EMISSIONS BUDGETS (MVEBS) FOR EASTERN KENOSHA COUNTY FOR 2017 AND 2018

Year	Emissions (tons per summer day)	
	VOC	NO_X
2017	1.56	3.05
2018	1.44	2.75

D. Motor Vehicle I/M Program Certification

The requirement to adopt a motor vehicle I/M program for moderate ozone nonattainment areas is described in CAA section 182(b)(4) and the regulations for basic and enhanced I/M programs are found at 40 CFR part 51, subpart S. Under these cumulative requirements, states with areas classified as moderate nonattainment for ozone with 1990 Census-defined urbanized 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. The Chicago area meets the criteria for mandatory I/M under the 2008 ozone NAAQS and the Wisconsin portion of the Chicago area is already operating an enhanced I/M program due to being designated nonattainment and classified as serious or above under an earlier ozone NAAQS. EPA initially approved on August 16, 2001,[24] Wisconsin's I/M program and later approved on September 19, 2013,[25] revisions to Wisconsin's I/M program. Wisconsin's approved enhanced I/M program in the SIP is consistent with the requirements of 40 CFR part 51, subpart S for the alternate low enhanced performance standards. In its April 17, 2017, submission, Wisconsin certified that it still meets the Federal enhanced I/M performance requirement. Therefore, EPA is proposing to find that Wisconsin has met the I/M requirement for its portion of the Chicago area for the 2008 ozone NAAQS.

E. NO_X RACT Certification

Section 182(f) of the CAA requires RACT level controls for major stationary sources of NO_X located in moderate ozone nonattainment areas. ''RACT'' is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[26] Section 302 of the CAA defines a major stationary source as any facility which has the potential to emit 100 tons per year of any air pollutant. EPA approved Wisconsin's NO_X RACT program into the SIP on October 19, 2010,[27] for purposes of the 1997 ozone NAAQS. Wisconsin's NO_X RACT requirements

[20] The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB, if needed, subsequent to initially establishing a MVEB in the SIP.

[21] 69 FR 40004.

[22] 68 FR 38974, 38984.

[23] 80 FR 17428.

[24] 66 FR 42949.

[25] 78 FR 57501.

[26] 44 FR 53762.

[27] 75 FR 64155.

are codified at NR 428.20 to 428.26 of the Wisconsin Administrative Code. Wisconsin's NO_X RACT rules are applicable to major stationary sources of NO_X located in Wisconsin's moderate ozone nonattainment areas, including Kenosha County. The only major source of NO_X in the portion of Kenosha County that is designated nonattainment for the 2008 ozone NAAQS is Wisconsin Electric Power Company, D/B/A We Energies-Pleasant Prairie Power Plant. This source has selective catalytic reduction (SCR) technology for controlling NO_X emissions from each of its two coal-fired boilers and has been subject to an emission limit of 0.10 pounds of NO_X per Million British Thermal Unit (MMBTU) since May 1, 2009. Because Wisconsin has EPA-approved NO_X RACT rules applicable to Kenosha County sources in its SIP, and EPA considers the current control technology and limit at the major stationary source in the 2008 ozone NAAQS nonattainment portion of Kenosha County to be RACT for NO_X, EPA is proposing to find that Wisconsin has satisfied the NO_X RACT requirements for its moderate nonattainment plan for the 2008 ozone NAAQS for the Wisconsin portion of the Chicago nonattainment area, which is the portion of Kenosha County inclusive and east of Highway 94.

F. Emissions Statement Certification

For marginal ozone nonattainment areas, states must adopt SIP provisions requiring emissions statements from stationary sources of VOC and NO_X.[28] States may waive this requirement for sources emitting less than 25 tons per year of VOC and less than 25 tons per year of NO_X.[29] Under NR 438 of the Wisconsin Administrative Code, Wisconsin requires annual NO_X and VOC emission reporting from any facility in the state that emits NO_X above 10,000 pounds (5 tons) per year and VOC above 6,000 pounds (3 tons) per year. This includes facilities in nonattainment areas such as the Wisconsin portion of the Chicago nonattainment area for the 2008 ozone NAAQS. EPA previously approved NR 438 into the Wisconsin SIP on December 6, 1993.[30]

As part of a moderate ozone nonattainment plan, states should certify that the proper emissions statement reporting requirements are in place. If an area has a previously approved emission statement provision in the SIP in force for the 1997 ozone NAAQS or the 1-hour ozone NAAQS that covers all portions of the nonattainment area for the 2008 ozone NAAQS, then such rule should be sufficient for purposes of the emissions statement requirement for the 2008 ozone NAAQS. The state should review the existing rule to ensure it is adequate and, if it is, may rely on it to meet the emission statement requirement for the 2008 ozone NAAQS. In cases when an existing emission statement requirement is still adequate to meet the requirements of the implementation rule for the 2008 ozone standard, states can provide the rationale for that determination to EPA in a written statement in its SIP submission to meet this requirement.[31]

In a separate submission to EPA on August 15, 2016, Wisconsin included a certification that its emissions statement provision in the SIP is still adequate to meet the requirements for the Wisconsin portion of the Chicago 2008 ozone nonattainment area. In Wisconsin's January 23, 2018, supplemental submission to EPA regarding Wisconsin's moderate area ozone nonattainment plan for the Chicago area, Wisconsin requested that EPA act on its August 15, 2016, emission statement certification as part of the action on Wisconsin's nonattainment plan elements included in this proposal. Because Wisconsin has an EPA approved SIP provision requiring stationary sources to report annually their NO_X and VOC emissions at least as high as 25 tons per year for each precursor, EPA proposes that Wisconsin has satisfied the emissions statement requirement for its nonattainment plan for the Chicago area for the purposes of the 2008 ozone NAAQS.

III. What action is EPA proposing?

EPA is proposing to approve revisions to Wisconsin's SIP pursuant to section 110 and part D of the CAA and EPA's regulations because Wisconsin's April 17, 2017, nonattainment plan submissions and January 23, 2018, supplement along with a prior submission on August 15, 2016, satisfy the emission inventory, RFP, RFP contingency measure, NO_X RACT, emissions statement, I/M, and transportation conformity requirements for the Wisconsin portion of the Chicago area for the 2008 ozone NAAQS.

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

• Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

• Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as

[28] CAA section 182(a)(3)(B)(i).

[29] CAA section 182(a)(3)(B)(ii).

[30] 58 FR 64155.

[31] 80 FR 12264 at 12291.

specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

Dated: August 1, 2018.

James Payne,

Acting Deputy Regional Administrator, Region 5.

[FR Doc. 2018–17590 Filed 8–15–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0165; FRL–9982–30—Region 5]

Air Plan Approval; Ohio; Approval of Sulfur Dioxide Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, under the Clean Air Act, Ohio's revised sulfur dioxide (SO_2) regulations, which Ohio submitted to EPA on March 13, 2017. Ohio updated its regulations to correct facility information which has changed and to add new emission limits for selected sources in Lake and Jefferson Counties. The revised regulations do not impose substantive changes or additional emission restrictions upon the Ohio State Implementation Plan (SIP) except for the site-specific provisions which have been revised in response to Ohio's nonattainment area designations of August 5, 2013. EPA is proposing to approve the majority of the revised regulations which the state submitted. EPA proposes to take no action on a portion of one submitted rule, which has never been federally approved. EPA also proposes to remove one rule from the SIP, which Ohio rescinded and replaced in 2009.

DATES: Comments must be received on or before September 17, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2017–0165 at *http://www.regulations.gov,* or via email to *Blakley.pamela@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Mary Portanova, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)353–5954, *portanova.mary@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. Introduction

On March 13, 2017, Ohio submitted revisions to the Ohio Administrative Code Chapter 3745–18 (OAC 3745–18), effective on February 16, 2017, for incorporation by EPA into the Ohio SO_2 SIP. OAC 3745–18 contains Ohio's air emission regulations for SO_2, which include both statewide requirements and emission limits for each Ohio county. This submittal was the product of a comprehensive examination of the state's SO_2 rules which Ohio undertook in accordance with its routine five-year rule review process. The state made a number of revisions to OAC 3745–18, updating facility data to match the current information in its operating permits database and removing requirements which only applied to facilities which have closed or units which have been removed from existing facilities. For several sources, Ohio retained the existing limits in OAC 3745–18, but separately issued federally enforceable permits containing tighter limits than those in the rule, or new provisions reflecting physical changes at the facility. Generally, these permits addressed changes which had occurred too late to include in the state's rulemaking action. The effect of EPA's approval of the revised OAC 3745–18 SIP rules submitted on March 13, 2017, would be to retain federal enforceability of both sets of limits for each source.

Ohio's March 13, 2017 submittal also included rules which Ohio had developed to address Clean Air Act (CAA) requirements for three 1-hour SO_2 nonattainment areas. Ohio first adopted these new rules, which are found in OAC 3745–18–03, OAC 3745–18–04, OAC 3745–18–47, and OAC 3745–18–49, on October 13, 2015, and submitted the rules to EPA as part of the state's October 13, 2015, nonattainment SIP submittal. Later, Ohio made significant revisions and corrections to some of the nonattainment area rules. The state adopted the revised nonattainment area rules on February 6, 2017, and submitted them to EPA on March 13, 2017, within Ohio's larger five-year rule review package. EPA is proposing action on Ohio's entire March 13, 2017 submittal of revisions to OAC 3745–18, regarding their incorporation into the state's SO_2 SIP. Separate action will address whether Ohio's revisions to OAC 3745–18–03, OAC 3745–18–04, OAC 3745–18–47, and OAC 3745–18–49 satisfy EPA's nonattainment planning requirements.

II. Review of Rules

A. Overview

Ohio's federally approved SO_2 SIP contains six generally applicable chapters of OAC 3745–18 and 88 county-specific chapters. The six generally applicable chapters are OAC 3745–18–01, "Definitions and incorporation by reference," OAC 3745–18–02, "Ambient air quality standards; sulfur dioxide," OAC 3745–18–03, "Attainment dates and compliance time schedules," OAC 3745–18–04, "Measurement methods and procedures,'' OAC 3745–18–05, ''Ambient and meteorological monitoring requirements,'' and OAC 3745–18–06, ''General emission limit provisions.'' Specific emission limits for SO_2 sources in each Ohio county are found in OAC 3745–18–07 (''Adams county emission limits'') through OAC 3745–18–94 (''Wyandot county emission limits'').

Ohio's March 13, 2017 SIP revision request included revised versions of all of these rules except OAC 3745–18–02 and OAC 3745–18–06. Ohio's federally approved SO_2 SIP currently includes OAC 3745–18–02, ''Ambient air quality standards; sulfur dioxide,'' with an effective date of January 23, 2006. However, Ohio rescinded this rule in 2009 and moved its contents to a new rule. See section II E. for the discussion of EPA's proposed action regarding OAC 3745–18–02. Ohio's federally approved SO_2 SIP also includes OAC 3745–18–06, with an effective date of February 17, 2011. Ohio did not submit any revisions to this rule. Therefore, the 2011 version of this rule is retained in Ohio's SIP.

Ohio's March 13, 2017 submittal updated OAC 3745–18 with current information for each listed facility, as confirmed by the state database. Some Ohio facilities have merged or changed ownership in recent years. Ohio updated the rules where necessary to reflect each facility's current name or ownership and the current location of the emission units that are subject to SO_2 emission limits. Ohio removed some facilities entirely from the site-specific emission limit listings if the state had evidence confirming that the entire facility has closed, or that all the emission units at the facility which were subject to the site-specific emission limits have been removed or are no longer emitting SO_2. If a facility's site-specific emission limits were removed, but the facility is still operating and could be subject to its general countywide limit, Ohio retained the facility's listing in the compliance date section of OAC 3745–18–03.

B. Revisions to General Rules

OAC 3745–18–01 contains definitions and references to test methods and other Federal requirements. Ohio updated the Code of Federal Regulations publication dates in this rule. EPA is proposing to approve OAC 3745–18–01.

OAC 3745–18–03 contains the compliance dates and schedules applicable to Ohio SO_2 sources. Ohio has removed and reserved OAC 3745–18–03(A), which required attainment with the NAAQS by specific dates, because the county-specific attainment dates in OAC 3745–18–03(A)(2) have passed and Ohio found the requirements in OAC 3745–18–03(A)(1) duplicative of language in other state and Federal documents. Since the attainment date language was no longer contained in the rule, Ohio retitled OAC 3745–18–03 ''Compliance time schedules.'' Ohio added paragraphs in OAC 3745–18–03(B) and OAC 3745–18–03(C) which apply to sources in the Lake County nonattainment area and the Steubenville WV–OH interstate nonattainment area. These paragraphs are discussed below in section II C. EPA is proposing to approve OAC 3745–18–03.

OAC 3745–18–04 contains fuel test method requirements for Ohio facilities. Ohio revised OAC 3745–18–04 to update facility names and locations for sources with facility-specific coal test method requirements. Ohio removed facility-specific or county-specific coal test methods where they were no longer necessary, because the affected facilities are no longer operating, no longer using coal, or currently using other methods, such as a continuous emission monitoring system (CEMS), for determining compliance.

Ohio added one paragraph and removed another paragraph in OAC 3745–18–04(D), which are applicable to sources in the Lake County nonattainment area and the Steubenville WV–OH interstate nonattainment area. These paragraphs are discussed below in section II C.

Several paragraphs in OAC 3745–18–04 have not been previously approved by EPA, because they appeared to allow compliance determinations based on 30-day averaged emission calculations for emission limits which were intended to address NAAQS with averaging times of 24 hours and less. These paragraphs, OAC 3745–18–04(D)(2), (D)(3), (D)(5), (D)(6) and OAC 3745–18–04(E)(2), (E)(3) and (E)(4), have not been significantly revised in Ohio's March 13, 2017 submittal. As the previously identified deficiencies have not been adequately addressed, EPA proposes to take no action on these provisions, and they are not part of the SIP.[1]

[1] When these provisions were originally submitted, EPA policy was generally to find that limits with compliance based on 30-day averaging did not assure attainment with standards based on shorter averaging times. In 2014, EPA issued guidance reflecting a new policy, indicating that it could find that limits with averaging times up to 30 days may provide for attainment in selected cases, subject to various criteria, most notably that the longer-term average limit reflect an adjustment so as to have comparable stringency to the 1-hour limit which had been demonstrated to provide for attainment. Ohio has not sought to demonstrate that these criteria are met on a state-wide basis, and so EPA has no new information that might warrant revisiting the approvability of these provisions.

In the March 13, 2017 submittal, OAC 3745–18–04(D)(9)(c) contains a typographical error which misnames the required method for coal sampling and analysis for facilities in Butler County. OAC 3745–18–04(D)(9)(c) was approved into Ohio's SO_2 SIP without the typographical error on January 31, 2002 (67 FR 4669). EPA proposes to take no action on the March 13, 2017 submittal of OAC 3745–18–04(D)(9)(c). The paragraph will instead be retained in Ohio's SO_2 SIP as it was previously approved.

Ohio made minor grammatical changes to OAC 3745–18–05, which covers requirements for ambient monitoring. EPA proposes to find these changes approvable.

Most of Ohio's county-specific rules, OAC 3745–18–07 through OAC 3745–18–94, have been updated significantly. Ohio removed facility-specific emission limits where the affected facilities have closed, or where the units which were subject to the previously approved rules have been retired or have converted to use lower sulfur fuels. Ohio confirmed the facilities' current emissions and emission limitations with its operating permits database. Each county-specific rule has retained its previously approved general SO_2 emission limit, applicable to all coal-fired steam generating units in the county. CAA section 110(l) states that SIP revisions cannot be approved if they interfere with applicable requirements concerning attainment and reasonable further progress. EPA proposes to find that it is permissible under CAA section 110(l) to approve the revised rules in Ohio's March 13, 2017 SIP submittal where Ohio has removed obsolete emission limits for units which have permanently closed and for which the permits to operate have been revoked, as these rule revisions do not indicate permission to increase emissions.

C. Rules Addressing Nonattainment Areas

On August 5, 2013, EPA designated three areas nonattainment for SO_2 in Ohio: Lake County, the Muskingum River area, and the Steubenville OH-WV interstate area. Ohio was required to prepare SIPs which would bring its three SO_2 nonattainment areas into attainment by October 4, 2018. After evaluating local SO_2 emissions and using dispersion models to determine the emission limits which could be expected to provide for attainment, Ohio revised its SO_2 SIP rules to address SO_2 sources within these nonattainment areas at OAC 3745–18–49 (Lake County) and OAC 3745–18–47 (Jefferson County). Ohio added related provisions in OAC 3745–18–03 and OAC 3745–18–04. Ohio first adopted these nonattainment area provisions in October 2015, but later made significant revisions and corrections to the rules. Ohio adopted the revised rules on February 6, 2017, and submitted them to EPA on March 13, 2017.

1. Lake County Area

The new and revised rules relevant to the Lake County nonattainment area include OAC 3745–18–03(B)(9), OAC 3745–18–03(C)(11), OAC 3745–18–04(D)(10), OAC 3745–18–49(F), OAC 3745–18–03(C)(3)(hh), and the removal of the previously approved paragraph OAC 3745–18–49(G). Ohio revised the Lake County rule at OAC 3745–18–49(F) to add new emission limits for the Painesville Municipal Electric Plant in Painesville, Ohio (the Painesville plant). OAC 3745–18–49(F) restricts the Painesville plant to operate only one of its three boilers on coal at any time; limits Boiler 5 to 287 pounds of SO_2 per hour (lb/hr), averaged over 30 operating days; and limits Boilers 3 and 4 each to 340 lb/hr, averaged over 30 operating days. The combined average operating rate for the three boilers must not exceed 249 million British Thermal Units per hour (MMBtu/hr) for any calendar day, excluding heat input from burning natural gas or biomass. Each boiler is additionally limited to no more than a ten percent annual capacity factor as defined in 40 CFR 63.7575, excluding heat input from burning natural gas or biomass. The rule also defines biomass as an additional fuel source for this facility; the biomass would not be a significant source of SO_2. The revisions to OAC 3745–18–49(F) represent a reduction in allowable SO_2 emissions and operating rates for this facility.

Ohio added OAC 3745–18–03(B)(9) to require the Painesville plant to apply for a permit or permit modification to provide for compliance with its site-specific SO_2 emission limits. Ohio added OAC 3745–18–03(C)(11) to require compliance with the revised site-specific rules for the Painesville plant as of thirty days from February 16, 2017, which is the effective date of the revised rules OAC 3745–18–03(C)(11) and OAC 3745–18–49(F). The Painesville plant's compliance date is the earliest compliance date practicable after Ohio revised the facility's previously adopted rules to address an issue EPA identified in Ohio's 2015 nonattainment SIP submittal for Lake County. Ohio added OAC 3745–18–04(D)(10) to provide the method for calculating compliance with the Painesville plant's revised emission limits in OAC 3745–18–49(F).

Ohio has removed the entry at OAC 3745–18–49(G) for the Eastlake Power Plant in Willoughby, Ohio (now known as the Eastlake Substation), because the boilers at the Eastlake Substation which were subject to OAC 3745–18–49(G) were permanently shut down in April 2015. OAC 3745–18–03(C)(3)(hh) still requires any remaining emission units at the Eastlake Substation to comply with the county-wide SO_2 limits at OAC 3745–18–49(A). The shut-down units, however, may not restart without applying for a new permit. Because the Eastlake Substation has permanently retired its boilers and has thus significantly reduced its SO_2 emissions, and because the Eastlake Substation no longer holds a permit to restart the boilers, EPA proposes to find that the removal from the SIP of the Eastlake Substation's boiler limits is permissible under CAA section 110(l).

EPA is proposing to approve the rule revisions in OAC 3745–18 which apply to the Painesville plant and the Eastlake Substation in Lake County, because the rules update the SIP and strengthen it by reducing allowable emissions. EPA is not proposing action regarding whether Ohio's revisions to OAC 3745–18–49 and related material satisfy nonattainment planning requirements for the Lake County nonattainment area. EPA intends to address whether Ohio has satisfied the nonattainment planning requirements for the Lake County nonattainment area in a separate action.

2. Muskingum River Area (Morgan and Washington Counties)

The rules relevant to the Muskingum River nonattainment area include OAC 3745–18–64 (Morgan County), OAC 3745–18–90 (Washington County) and OAC 3745–18–03(C)(3)(tt). The previously approved rules OAC 3745–18–64(B) and OAC 3745–18–90(B) contained identical SO_2 emission limits for the Muskingum River power plant, located near Waterford, Ohio (the Muskingum River plant). The boilers at the Muskingum River plant were permanently shut down as of July 14, 2015, leaving no emission units at the Muskingum River plant which are subject to OAC 3745–18–64(B) or OAC 3745–18–90(B). These units have been removed from the facility's permit. The shut-down units may not restart unless the facility applies for and receives a new permit. Therefore, Ohio has removed the entries for the Muskingum River plant from OAC 3745–18–64(B) and OAC 3745–18–90(B). Ohio retained and renumbered paragraph OAC 3745–18–03(C)(3)(tt) for the Muskingum River plant and updated the facility's name to Muskingum River Development, LLC. OAC 3745–18–03(C)(3)(tt) requires any remaining SO_2 emission units at the facility to comply with the limits specified in OAC 3745–18–90, which, as revised, contains only the Washington County general SO_2 limit for coal-fired steam generating units at OAC 3745–18–90(A). Because the Muskingum River plant has permanently retired its large boilers and has thus significantly reduced its SO_2 emissions, and because the Muskingum River plant no longer holds a permit to restart the boilers, EPA proposes to find that the removal from the SIP of the Muskingum River plant's boiler emission limits is permissible under CAA section 110(l). EPA is proposing to approve the rule revisions applicable to the Muskingum River plant because they update Ohio's SO_2 SIP by removing obsolete emission limits while complying with CAA section 110(l). EPA is not proposing action regarding whether Ohio's revisions to OAC 3745–18–64(B), OAC 3745–18–90(B) and related material satisfy nonattainment planning requirements for the Muskingum River nonattainment area. EPA intends to address whether Ohio has satisfied the nonattainment planning requirements in a subsequent action.

3. Steubenville Area (Jefferson County)

The new and revised rules relevant to the Steubenville OH-WV interstate nonattainment area include the new paragraphs at OAC 3745–18–03(B)(9) and OAC 3745–18–03(C)(11), the revised emission limits in OAC 3745–18–47, and the removal of OAC 3745–18–04(D)(4). Ohio addressed three Jefferson County sources for the Steubenville nonattainment area: The Cardinal Power Plant in Brilliant, Ohio (the Cardinal plant), the Mingo Junction Steel Works, LLC facility in Mingo Junction, Ohio (Mingo Junction Steel Works), and the Mingo Junction Energy Center, LLC facility in Mingo Junction, Ohio, (Mingo Junction Energy Center). Ohio revised OAC 3745–18–47(D) for the Cardinal plant to limit each of units 1 and 2 to 1.065 pounds of SO_2 per million British Thermal Units (lb/MMBtu) actual heat input. These limits, which reflect current permit conditions for the Cardinal plant, represent an SO_2 emission reduction from the previously approved limits for the Cardinal plant, which had allowed 7.08 lb/MMBtu at units 1 and 2. Ohio also revised the emission limit for the Cardinal plant's unit 3 to 0.66 lb/MMBtu actual heat input and moved the listing to OAC 3745–18–47(D). Unit 3 had previously been listed under OAC 3745–18–47(O) as a unit operated by Buckeye Power, Incorporated, with a limit of 2.0 lb/MMBtu. EPA is proposing to approve these rule revisions because they update the Ohio SO_2 SIP and strengthen it by reducing allowable SO_2 emissions.

For Mingo Junction Steel Works, which was formerly listed in OAC 3745–18–47(G) as Wheeling-Pittsburgh Steel, Steubenville South Plant, Ohio has removed the obsolete emission limits in OAC 3745–18–47(G)(1) for Boilers 1 through 12 and the obsolete emission limits in OAC 3745–18–47(G)(2) for the forty-four-inch soaking pits combusting coke oven gas. The boilers have shut down and the Mingo Junction Steel Works no longer receives or uses coke oven gas as fuel; it now uses natural gas. Ohio added limits of 1.0 lb/hr for the facility's reheat furnaces 2 to 4 at OAC 3745–18–47(G)(3), a limit of 105.0 lb/hr for the electric arc furnace number 1 at OAC 3745–18–47(G)(4), and a limit of 14.0 lb/hr for the ladle metallurgical furnace to the electric arc furnace at OAC 3745–18–47(G)(5). EPA is proposing to approve these rule revisions because they update the Ohio SO_2 SIP to reflect the current facility name and operations at Mingo Junction Steel Works. EPA is also proposing to approve OAC 3745–18–47(G) because it strengthens the SIP by reducing allowable emissions.

For the Mingo Junction Energy Center, the state has added OAC 3745–18–47(P) which limits units 1 to 4 to 0.0028 lb/MMBtu actual heat input each. This limit reflects a fuel change from coke oven gas to natural gas. EPA is proposing to approve this rule revision because it strengthens the Ohio SO_2 SIP by reducing allowable emissions.

Ohio added OAC 3745–18–03(B)(9) to require Mingo Junction Steel Works and the Mingo Junction Energy Center to apply for a permit or permit modification to provide for compliance with their site-specific SO_2 emission limits. (Cardinal's revised limits are already in its permit.) Ohio added OAC 3745–18–03(C)(11) to require compliance with the revised site-specific rules for the Cardinal plant, Mingo Junction Steel Works and the Mingo Junction Energy Center by January 1, 2017. This compliance date reflects the recommendations of EPA's nonattainment SIP guidance.

Ohio removed OAC 3745–18–04(D)(4), which gave a specific compliance test method for the Cardinal plant. The provision is no longer considered necessary due to the Cardinal plant's current limits, operations, and emission controls. The Cardinal plant is subject to the federally approved compliance test requirements in OAC 3745–18–04(D). Under its current operating permit, the Cardinal plant uses CEMS to determine compliance with its permitted emission limits.

EPA is proposing to approve the revised rules for the Cardinal plant, Mingo Junction Steel Works and the Mingo Junction Energy Center as measures which update the state's SO_2 SIP and strengthen the SIP by reducing allowable emissions. EPA is not proposing action regarding whether Ohio's revisions to OAC 3745–18 for the Cardinal plant, Mingo Junction Steel Works and the Mingo Junction Energy Center, and related material, satisfy nonattainment planning requirements for the Steubenville OH-WV interstate nonattainment area. EPA intends to address whether Ohio has satisfied the nonattainment planning requirements for the Steubenville WV-OH nonattainment area in a subsequent action.

D. County-Specific Issues

1. Cuyahoga County

Ohio revised OAC 3745–18–24(V) regarding the Medical Center Company, located in Cleveland, to update the facility's operating unit names and to remove emission limits for units which have not been present at the facility since 2002. The Medical Center Company has recently replaced two boilers, 1N and 2N, with three new units having lower SO_2 emissions. Ohio placed new requirements in a 2015 federally enforceable permit-to-install for the Medical Center Company, stating that the old boilers must be permanently retired by January 13, 2017. See final permit-to-install number P0118541. Ohio relied on the emission reductions from this boiler replacement during the designation process for the 2010 SO_2 NAAQS. However, the Cuyahoga County rule at OAC 3745–18–24, as adopted February 6, 2017, and submitted to EPA on March 13, 2017, retained the Medical Center Company's previously approved emission limit of 4.6 lb/MMBtu for each of the old boilers. Although the rule retained the previously approved limit, the facility's boiler closure requirement and the lower SO_2 emission limits applicable to its new units are federally enforceable in the facility's permit. EPA is proposing to approve the revised OAC 3745–18–24(V) as an update to the SIP, since this action would retain EPA's authority to enforce both limits.

Likewise, the emission limits for Cleveland Thermal, LLC, at OAC 3745–18–24(G) and OAC 3745–18–24(H), have been updated to revise the facility's name, address, and premise number, and to remove emission limits for units which shut down prior to 2002. The updated rules still contain limits for several units, B101, B102, B104, B001, B002, B003, B005, and B006, which Cleveland Thermal, LLC, was to retire or convert to auxiliary status by January 2017, in accordance with a consent decree. The consent decree is in force and Cleveland Thermal, LLC's federally enforceable permit no longer includes these units. EPA is proposing to approve the revised OAC 3745–18–24(G) and OAC 3745–18–24(H) as an update to the SIP, since this action would retain EPA's authority to enforce both limits.

The remainder of the Cuyahoga County rule has been revised to update facility names and locations and to remove emission limits for facilities which were no longer operating and for units which no longer operate at existing facilities. EPA is proposing to approve OAC 3745–18–24.

2. Lorain County

Ohio revised the Lorain County rule at OAC 3745–18–53(B) for the Avon Lake Power Plant (the Avon Lake plant) in Lorain County, to update facility identification and remove emission limits for units which were shut down between 1981 and 1997. In November 2016, Ohio placed new SO_2 emission limits for the Avon Lake plant in a federally enforceable operating permit. The new limits, which were effective as of January 13, 2017, provided a combined emission limit of 1.59 lb/MMBtu for Boilers 10 and 12 on a 30-day average basis. See permit-to-install number P0121748. Ohio relied on these limits, which reduced the Avon Lake plant's allowable SO_2 emissions, during the designation process for the 2010 SO_2 NAAQS. However, the Lorain County rule, as adopted February 6, 2017, and submitted to EPA on March 13, 2017, retained the Avon Lake plant's previously approved emission limit of 4.65 lb/MMBtu for Boilers 10 and 12 each. Although the revised rule retained the previous, higher emission limit, the tighter SO_2 emission limits within the Avon Lake plant's operating permit are federally enforceable. EPA is proposing to approve OAC 3745–18–53(B), since this action would retain EPA's authority to enforce both limits.

Ohio added paragraph OAC 3745–18–53(G) for U.S. Steel Seamless Tubular Operations, LLC—Lorain. This paragraph covers an emissions unit which was previously listed under OAC 3745–18–53(D), but has been transferred to a new location and a new owner within the city of Lorain, Ohio. The unit retains its previously approved emission limits of 1.98 lb/MMBtu and 178 lb/hr.

The remainder of the Lorain County rule has been revised to update facility names and locations, and to remove emission limits for facilities which were no longer operating and for units which no longer operate at existing facilities. EPA is proposing to approve OAC 3745–18–53.

3. Ross County

Ohio revised the Ross County rule at OAC 3745–18–77(B) for the P. H. Glatfelter Company–Chillicothe Facility (Glatfelter) in Ross County, to update facility identification and remove emission limits for units which have been shut down for many years. In 2016, Ohio placed a new facility-wide SO_2 emission limit of 1,800 tons per year, effective January 13, 2017, in a federally enforceable permit for Glatfelter. See permit-to-install number P0118906. This limit reduced Glatfelter's allowable SO_2 emissions, and Ohio relied on this limit during the designation process for the 2010 SO_2 NAAQS. However, the Ross County rule, as adopted February 6, 2017, and submitted to EPA on March 13, 2017, retained Glatfelter's previously approved emission limit of 9.9 lb/MMBtu for Boilers 7 and 8 each. Although the rule retains the higher emission limit for Boilers 7 and 8, the tighter SO_2 emission limit in Glatfelter's permit is federally enforceable. EPA is proposing to approve OAC 3745–18–77(B) as an update to the SIP, since this action would retain EPA's authority to enforce both limits.

The remainder of the Ross County rule has been revised to remove emission limits for facilities which were no longer operating and for units which no longer operate at existing facilities. EPA is proposing to approve OAC 3745–18–77.

4. Wayne County

In 2016, Ohio placed a new facility-wide SO_2 emission limit of 1,475 tons per year, effective January 13, 2017, in a federally enforceable operating permit for the Department of Public Utilities, City of Orrville, Ohio facility (the Orrville plant) in Wayne County. See permit number P0120280. Ohio relied on this limit, which reduced the Orrville plant's allowable SO_2 emissions, during the designation process for the 2010 SO_2 NAAQS. The Wayne County rule at OAC 3745–18–91, as adopted February 6, 2017, and submitted to EPA on March 13, 2017, updated the Orrville plant's facility identification but retained the Orrville plant's previously approved emission limit of 7.0 lb/MMBtu for Boilers 10 to 13 each (OAC 3745–18–91(E)). Since the Orrville plant's tighter SO_2 emission limit in its permit is federally enforceable, EPA is proposing to approve OAC 3745–18–91(E) as an update to the SIP, since this action would retain EPA's authority to enforce both limits.

In 2015, Ohio revised the federally enforceable permit for Morton Salt, Inc., in Rittman, Ohio, to reflect the facility's replacement of two boilers with new units with lower SO_2 emissions. See permit number P0120758. Ohio relied on this boiler replacement and the resulting reduction in allowable SO_2 emissions during the designation process for the 2010 SO_2 NAAQS. The Wayne County rule at OAC 3745–18–91, as adopted February 6, 2017, and submitted to EPA on March 13, 2017, updated Morton Salt, Inc.'s facility identification but retained the facility's previously approved emission limit of 7.0 lb/MMBtu for Boilers 1 and 2 each (OAC 3745–18–91(F)). Since Morton Salt, Inc. has replaced its old boilers, and has federally enforceable SO_2 emission limits for its new units in its permit, EPA is proposing to approve OAC 3745–18–91(F) as an update to the SIP, since this action would retain EPA's authority to enforce both limits.

The remainder of the Wayne County rule has been revised to remove emission limits for facilities which were no longer operating and for units which no longer operate at existing facilities. EPA is proposing to approve OAC 3745–18–91.

E. Removal of Rescinded Rule

On September 17, 2009, Ohio submitted revisions to its SIP, and requested that EPA remove OAC 3745–18–02, ''Ambient air quality standards; sulfur dioxide,'' from the SIP, because Ohio had rescinded OAC 3745–18–02 and moved its contents to a new rule, OAC 3745–25–02, ''Ambient air quality standards,'' effective April 18, 2009. This rule defined and listed the primary and secondary SO_2 standards (prior to the 2010 SO_2 NAAQS) and required ambient air quality sampling using the EPA Reference Method or an equivalent method. In accordance with Ohio's September 17, 2009, SIP revision request, EPA approved OAC 3745–25–02 into Ohio's SIP on October 26, 2010 (75 FR 65572), but EPA did not remove OAC 3745–18–02 from the SIP. Ohio's rule OAC 3745–25–02(B), effective on April 18, 2009, contained substantially identical rule language to the existing SIP version of OAC 3745–18–02 which was effective on January 23, 2006. As the rule language which was previously approved as OAC 3745–18–02 can now be found within Ohio's federally approved SIP at OAC 3745–25–02(B), the removal of rule OAC 3745–18–02 from the SIP is permissible under section 110(l) of the CAA. Therefore, EPA proposes to remove OAC 3745–18–02 from Ohio's SIP.

III. What action is EPA taking?

EPA is proposing to approve Ohio's March 13, 2017 submittal of OAC 3745–18–01; OAC 3745–18–03; OAC 3745–18–04 [with the exception of OAC 3745–18–04(D)(2), (D)(3), (D)(5), (D)(6), and (D)(9)(c), and OAC 3745–18–04(E)(2), (E)(3) and (E)(4)]; OAC 3745–18–05; and OAC 3745–18–07 through OAC 3745–18–94; as effective on February 16, 2017. EPA proposes to find that these regulations update and strengthen the Ohio SO_2 SIP. EPA proposes to take no action on OAC 3745–18–04(D)(2), (D)(3), (D)(5), (D)(6), and (D)(9)(c), and OAC 3745–18–04(E)(2), (E)(3) and (E)(4). EPA proposes to remove OAC 3745–18–02 from the Ohio SO_2 SIP.

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Ohio rules OAC 3745–18–01; OAC 3745–18–03; OAC 3745–18–04 [with the exception of OAC 3745–18–04(D)(2), (D)(3), (D)(5), (D)(6), and (D)(9)(c), and OAC 3745–18–04(E)(2), (E)(3) and (E)(4)]; OAC 3745–18–05; and OAC 3745–18–07 through OAC 3745–18–94, as effective on February 16, 2017. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

• Is not a significant regulatory action subject to review by the Office of

Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 2, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2018–17587 Filed 8–15–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R07–OAR–2018–0532; FRL–9982–27—Region 7]

Air Plan Approval; State of Iowa; Attainment Redesignation for 2008 Lead NAAQS and Associated Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to take action to approve the State of Iowa's request to redesignate portions of Pottawattamie County, Council Bluffs, Iowa to attainment for the 2008 lead (Pb) National Ambient Air Quality Standards (NAAQS). EPA's proposed approval of the redesignation request is based on the determination that the Council Bluffs area has met the criteria for redesignation to attainment set forth in the Clean Air Act (CAA), including the determination that the area has attained the standard. Additionally, EPA is approving the state's plan for maintaining the 2008 Pb NAAQS in the Council Bluffs area for ten years beyond redesignation.

DATES: Comments must be received on or before September 17, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2018–0532 to *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Doolan, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, KS 66219 at (913) 551–7719 or by email at *doolan.stephanie@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA. This section provides additional information by addressing the following:

I. What action is EPA proposing to take?

EPA is proposing to approve Iowa's request to redesignate the Council Bluffs area to attainment for the 2008 Pb NAAQS. On September 18, 2017, the state submitted a request for redesignation that demonstrates NAAQS attainment and an associated maintenance plan to ensure that the area continues to attain the standard. Based on its review of the state's submittal which is described in detail in the following sections, EPA proposes to approve the redesignation request for the area and associated maintenance plan.

II. Background for EPA's Proposed Action

On October 15, 2008, EPA promulgated a revision to the Pb NAAQS, lowering the standard from 1.5 micrograms per cubic meter (μg/m^3) to 0.15 μg/m^3 (73 FR 66963). The state began air monitoring for Pb on November 3, 2009, at a source-oriented monitor in the Council Bluffs area near the Griffin Pipe Products Company, LLC

(Griffin Pipe) facility. The 2010 through 2012 design value for Pb at the monitor was 0.26 µg/m³, violating the 2008 Pb NAAQS.

Effective December 31, 2011, EPA designated a portion of Pottawattamie County, Council Bluffs, Iowa, as nonattainment for the 2008 Pb NAAQS (76 FR 72097). On February 3, 2015, the Iowa Department of Natural Resources (IDNR) submitted a plan to bring the area back into attainment of the standard. EPA approved the state's SIP revision in a **Federal Register** notice dated February 26, 2016 (81 FR 9770). The area attained the 2008 Pb NAAQS by the statutory deadline of December 31, 2016. The 2014 through 2016 design value for the area is 0.10 µg/m³.

The mechanisms to enforce the attainment SIP revision are an Administrative Consent Order between Griffin Pipe and the state, and an air construction permit issued to Alter Metal Recycling, the adjacent facility that provided scrap metal to Griffin Pipe. On May 3, 2014, Griffin Pipe ceased operations. The approved attainment SIP revision includes two operational strategies for Griffin Pipe, options A and B. Under option A, the facility resumes operations with operational control measures to limit emissions. Option B provides for the permitting and installation of a baghouse to control emissions and less operating restrictions. To date, Griffin Pipe has not resumed operations of its Council Bluffs facility, but the emissions controls for either option to resume manufacturing are permanent and enforceable.

Alter Metal Recycling continues to operate its facility under an air construction permit which contains a Reasonably Available Control Technology (RACT) limit and work practice standards in the form of paving and sweeping cleaning haul routes with a HEPA vacuum street sweeper. Also, Alter's construction permit contains limitations on truck traffic and total materials shipped are not to exceed 946,000 tons per rolling twelve-month period. In its construction permit, Alter is required to conduct silt sampling on haul routes internal to the facility boundaries at three locations to demonstrate that the silt content on roadways is less than 2.70 g/m². The facility is not required to sweep if there has been 0.2 inches of rain within a twenty-four-hour period, the haul routes have not been used that day, or the weather is too hazardous to conduct sweeping (*e.g.,* ice or snow). Alter's permit restricts truck traffic speeds on internal haul routes to twenty miles per hour. Recordkeeping to document haul route sweeping and weather conditions if sweeping is not conducted is required to be maintained for two years.

III. EPA's Analysis of the State's Request

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided the following criteria are met: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of title I of the CAA.

A. Criteria (1)—The Area Has Attained the 2008 Pb NAAQS

For designating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). EPA is proposing to determine that the portions of Pottawattamie County, Council Bluffs, Iowa, that previously violated the 2008 Pb NAAQS are now attaining it.

According to 40 CFR part 50, appendix R, the 2008 Pb NAAQS is met at a monitoring site when the identified design value is valid and is less than or equal to 0.15 µg/m³. The form of the standard is based on the maximum three-month rolling average over a three-year period (thirty-six rolling calendar quarters, or thirty-eight total months). The design value is the highest Pb concentration recorded for a rolling three-month calendar quarter over a three-year period. The area has not recorded a Pb value at the air monitor greater than 0.15 µg/m³ during any rolling three-month calendar quarter since December 2012. As discussed above, the 2014 through 2016 design value, which is the three-year period for which valid data are available at this time, is 0.10 µg/m³.

B. Criteria (2)—The Area Has a Fully Approved SIP Under Section 110(k)

As discussed above, EPA approved the state's SIP revision in a **Federal Register** rulemaking dated February 26, 2016 (81 FR 9770). EPA believes that the state has met all of the requirements for approval of the state's attainment SIP revision. The requirements of the attainment SIP revision remain fully enforceable, including contingency measures in the event that the air monitor would record a future violation for the area.

C. Criteria (3)—The Air Quality Improvement Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the Applicable SIP and Applicable Federal Air Pollutant Control Regulations and Other Permanent and Enforceable Reductions

For redesignating a nonattainment area to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reduction in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions. EPA proposes to find that Iowa has demonstrated that the observed air quality improvement in the Council Bluffs area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP.

The Council Bluffs Pb nonattainment SIP included an Administrative Consent Order between IDNR and Griffin Pipe dated January 29, 2015, and an air construction permit for Alter Metal Recycling dated September 2, 2014. Griffin Pipe is no longer operating at its Council Bluffs facility, which reduces the amount of Pb measured at the air monitor. In both scenarios, options A or B, under which Griffin Pipe may resume operations, there are emissions limitations and work practice controls that are expected to maintain NAAQS attainment. Both scenarios include haul road sweeping and cleaning, implementation of a scrap management plan to minimize the amount of Pb materials introduced to the melting process, and the use of Best Management Practices to control fugitive dust. The major difference between the two options is that option A employs more stringent production limits to control emissions; whereas, option B allows for greater production, but requires the facility to install a baghouse for greater emissions control. IDNR modeled both options and both demonstrate attainment of the standard. Thus, despite the uncertainty of whether Griffin Pipe will resume operations, EPA believes that the emissions reductions imposed by the approved SIP revision will continue to be permanent and enforceable.

With regard to Alter Metal Recycling, the fugitive dust re-entrained by traffic along the haul routes within the facility is controlled by an air construction permit. The construction permit requires, among other things, paving of haul routes for truck traffic within the facility boundaries, limits on the hours of operation, a posted speed limit of twenty miles per hour to control re-entrainment of dust, and work practice standards that include sweeping haul routes using a HEPA filter vacuum truck. EPA believes that Alter's air construction permit provides permanent and enforceable controls on fugitive Pb dust emissions.

D. Criteria (4)—The Administrator Has Fully Approved a Maintenance Plan for the Area as Meeting the Requirements of Section 175A

In conjunction with its redesignation request submitted to EPA on September 18, 2017, IDNR also submitted a maintenance plan to provide for the ongoing attainment of the 2008 Pb NAAQS for at least ten years following the effective date of approval of the redesignation SIP revision. EPA believes the maintenance plan meets the requirements of section 175A of the CAA. Section 175A of the CAA establishes requirements for maintenance plans for seeking redesignation from nonattainment to attainment. EPA's interpretation of section 175A is contained in a September 4, 1992, Memorandum from John Calcagni, Director (at that time), Air Quality Management Division, to the directors of the air programs in the ten EPA regions. The Calcagni Memorandum provides guidance on the content of a maintenance plan, explaining that it should address five requirements: (1) An emissions inventory; (2) a maintenance demonstration; (3) an air quality monitoring commitment; (4); verification of continued attainment; and (5) a contingency plan. The following provides a discussion of how EPA believes the state's maintenance plan meets the requirements of 175A.

1. Emissions Inventory

The state is required to develop an inventory of actual emissions to identify the level of emissions sufficient to attain the NAAQS. Since Griffin Pipe is currently idled, IDNR provided an analysis of potential to emit (PTE) rather than actual emissions, because it believes the actuals are an underestimation. For Griffin Pipe, IDNR estimates PTE to be 0.254 tpy for option A and 0.392 tpy for option B based on the allowable emissions in the Administrative Consent Order. For Alter Metal Recycling, IDNR estimates that its current PTE is 0.61 tpy based on the allowable emissions in its air construction permit. EPA believes the state has satisfied the requirement to develop an attainment inventory.

2. Maintenance Demonstration

The state may generally demonstrate maintenance of the 0.15 ug/m^3 standard by either showing that future Pb emissions will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the 2008 Pb NAAQS. The demonstration should be for a period of ten years following the redesignation, *e.g.,* until 2028 for the maintenance plan update.

The state demonstrates attainment of the standard using the attainment inventory since it is based on maximum permitted allowable emissions and Pb emissions are not expected to increase over the maintenance period. Further, IDNR relied on the attainment plan modeling submitted in 2015 as a part of the EPA approved SIP. Dispersion modeling is a more sophisticated means of demonstrating maintenance because it incorporates meteorology, topography, and source characteristics in addition to permitted allowable emissions rates. The attainment demonstration modeling followed current EPA guidance, used the EPA-approved modeling software, AERMOD, and maximum permitted emissions rates. No significant changes in modeling inputs have occurred since its submittal and none are anticipated through the maintenance period. Therefore, EPA finds that the state has demonstrated that Iowa has demonstrated maintenance of the 2008 Pb NAAQS.

3. Monitoring Network

Once an area has been redesignated, the state has committed in its Redesignation Request and Maintenance Plan for the Pb Nonattainment Area in Council Bluffs, Iowa, that it will continue to operate the air quality monitor (site ID 19–155–0011) in accordance with 40 CFR part 58. Air modeling has shown this monitoring location to be in the predicted area of maximum impact from fugitive emissions from both Griffin Pipe and Alter Metal Recycling. Thus, this air monitoring location continues to be acceptable for verifying continued NAAQS attainment. The state will continue to operate a Pb monitor at this location for a minimum of ten years. As required by section 175A, eight years following redesignation, the state shall submit an additional maintenance plan. The Pb monitoring network will be revisited at that time.

4. Verification of Continued Attainment

The state has the legal authority to enforce and implement the requirements of Administrative Consent Order for Griffin Pipe and the construction permit for Alter Metal Recycling to ensure ongoing attainment of the 2008 Pb NAAQS. These SIP-approved documents contain the permanent and enforceable measures for controlling Pb emissions. Should another source of Pb emissions to air seek a permit in the area to construct a new source or modify an existing one, the state will evaluate on a case-by-case basis the potential impacts to air quality and NAAQS attainment. State law also gives IDNR the ability to establish more stringent emissions standards and/or the ability to require the installation of additional control equipment to ensure the attainment or maintenance of the NAAQS.

The state commits in its maintenance plan to continue to operate its Pb monitoring site to verify the attainment status of the area and will continue to follow the air monitoring network review process, as required by 40 CFR part 58, to determine the adequacy of the Pb monitoring network when monitoring may be discontinued.

5. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation to attainment. The state has established a trigger that will initiate a timely response to indications of a possible future violation of the 2008 Pb NAAQS: It will evaluate the need for additional control measures if any three-month rolling average concentration of 0.14 ug/m^3(approximately 95 percent of the standard) or greater is measured at the ambient air monitor. The state will require that any necessary measures be implemented as expeditiously as practicable. IDNR has the authority (Iowa Code 455B.134) to issue orders consistent with rules to cause the abatement or control of air pollution to ensure that the NAAQS are not violated. The approach of using a trigger at approximately 95 percent of the standard is expected, along with the previously approved SIP control measures, to ensure maintenance of the standard.

Contingency measures in the approved attainment SIP revision dated February 26, 2016 (81 FR 9770) remain available and enforceable. If a NAAQS violation occurs after redesignation, at a minimum the IDNR will require the implementation of all measures, including the contingency measures, contained in the nonattainment plan for the area prior to the redesignation of the area to attainment. The nonattainment plan contingency measures for Griffin Pipe are specified in conditions A–5, paragraph O, and B–5, paragraph O, of the Administrative Order on Consent (2015–AQ–02). The contingency measures for Alter Metal Recycling are specific in condition 14.L of its air construction permit (14–A–521). These contingency measures include, for example, additional haul road sweeping/cleaning requirements.

The state also has the authority to request or conduct new or supplemental reviews of Pb emissions from sources and activities affecting the nonattainment area. Contingency measures may include improvements to permitted control devices, or improvements to work practice standards, such as additional haul route sweeping. Once determined, the state will submit to EPA an analysis to demonstrate that the proposed measures are adequate to return the area to attainment.

E. Criteria (5)—The Area Has Met All Applicable Requirements Under Section 110 and Part D

Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; and programs to enforce the limitations. These requirements include, but are not limited to, the following: (1) Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; (2) provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; (3) implementation of a source permit program and provisions for the implementation of a Prevention of Significant Deterioration (PSD) program; (4) provisions for the implementation of Nonattainment New Source Review (NSR); (5) provisions for air pollution modeling; and (6) provisions for public and local agency participation in planning and emission control rule development.

The requirements for the area to have enforceable emissions limitations and other control measures as well as an appropriate air monitoring program for collecting air quality data were met in the approved attainment SIP revision dated February 26, 2016 (81 FR 9770). As ambient air monitoring data demonstrate, the means and methods of the attainment SIP revision have been successful in restoring air quality to attainment with the NAAQS.

The other requirements of section 110(a)(2) pertain to the administration of the state program to ensure the effectiveness of its overall air quality management program. The adequacy of the remaining elements of section 110(a)(2) including the state's PSD and Nonattainment NSR programs, its ability to conduct air modeling and provisions for public participation in air planning are addressed in EPA's November 14, 2015 final approval of the state's infrastructure SIP revision (80 FR 48791). In EPA's final approval of the state's infrastructure SIP revision for the 2008 Pb NAAQS, program elements necessary to ensure the enforcement and maintenance of air quality standards were determined to be adequate to meet the requirements of section 110(a)(2).

Finally, section 107(d)(3)(E)(v) requires that the redesignation plan meet the requirements of part D. Section 172(c)identifies key provisions that states must address in a nonattainment SIP, including: (1) Provisions for attainment and the timely implementation of all reasonably available control technology (RACT) and reasonably available control measures (RACM); (2) reasonable further progress (RFP); (3) an emissions inventory for the nonattainment area; (4) Nonattainment NSR; (5) a control strategy with enforceable limits and schedules and timetables for compliance; and (6) contingency measures.

The approved attainment SIP revision dated February 26, 2016 (81 FR 9770) contains legally enforceable control measures and includes an evaluation of how those measures meet RACT and RACM. The approved attainment SIP also included a plan for making RFP. All of the contingency measures in the approved attainment SIP revision are available and enforceable for use, if necessary. An emissions inventory is included in the attainment SIP revision and this inventory is updated in the Redesignation Request and Maintenance Plan as discussed in paragraph III, criteria 4 a. above. The state's Nonattainment NSR is approved in the infrastructure SIP revision (80 FR 48791).

IV. Summary of Proposed Action

EPA is proposing to approve Iowa's request to redesignate the Council Bluffs area to attainment for the 2008 Pb NAAQS. Based on its detailed analysis above, EPA believes that the state's September 18, 2017, request for redesignation demonstrates NAAQS attainment and the associated maintenance plan will ensure that the area continues to attain the standard. Thus, EPA proposes to approve the redesignation request for the area and associated maintenance plan.

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, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, 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 the National Technology Transfer and

Advancement Act (NTTA) because this rulemaking does not involve technical standards; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control.

Dated: August 3, 2018.

James B. Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR parts 52 and 81 as set forth below:

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 Q—Iowa

■ 2. In § 52.820, the table in paragraph (e) is amended by adding the entry ''(50) Lead Redesignation SIP and Maintenance Plan'' to read as follows:

§ 52.820 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IOWA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Explanation
* *	*	*	*	* *
(50) Lead Redesignation SIP and Maintenance Plan.	Portions of Pottawattamie County.	9/18/17	8/16/2018, [**Federal Register** citation of the final rule].	[EPA–R07–OAR–2018–0532; FRL–9982–27—Region 7].

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

■ 4. In § 81.316, the table entitled ''Iowa—2008 Lead NAAQS'' is amended by revising the entry ''Pottawattamie County, IA:'' to read as follows:

§ 81.316 Iowa

* * * * *

IOWA—2008 LEAD NAAQS

Designated area	Designation for the 2008 NAAQS [a]	
	Date [1]	Type
Pottawattamie County, IA:		
Pottawattamie County (part)	[Date of publication of the final rule in the **Federal Register**].	Attainment.
Area bounded by Avenue G on the north, N 16th/S 16th street on the east, 23rd Avenue on the south, and N 35th/S 35th street on the west.		
Rest of State		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

[FR Doc. 2018–17583 Filed 8–15–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

[Docket No. 180327320–8320–01]

RIN 0648–BH88

Fisheries of the Exclusive Economic Zone Off Alaska; Prohibit Directed Fishing for American Fisheries Act Program and Crab Rationalization Program Groundfish Sideboard Limits in the BSAI and GOA

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to modify management of the American Fisheries Act (AFA) Program and Crab Rationalization (CR) Program. This proposed rule has two related actions. The first action would modify regulations for AFA Program and CR Program vessels subject to limits on the catch of specific species (sideboard limits) in the Bering Sea and Aleutian Islands (BSAI) Management Area and Gulf of Alaska (GOA) Management Area. The second action would remove the requirement for the designated representatives of AFA inshore cooperatives to submit a weekly catch report. This proposed rule is intended to reduce administrative burdens associated with managing sideboard limits through annual harvest specifications, although it would not change NMFS's inseason management of sideboard limits and reduce reporting burdens for the designated representatives and members of AFA inshore cooperatives.

DATES: Comments must be received no later than September 17, 2018.

ADDRESSES: Submit your comments, identified by NOAA–NMFS–2018–0045, by either of the following methods:

• *Federal e-Rulemaking Portal.* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0045,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the Regulatory Impact Review (the ''Analysis'') prepared for this proposed rule may be obtained from *www.regulations.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS at the above address; and to OIRA by email to *OIRA_Submission@omb.eop.gov* or by fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Obren Davis, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the exclusive economic zone of the BSAI and Gulf of Alaska (GOA) under 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). NMFS manages vessels subject to specific limitations on the catch of specific species or species groups (sideboard limits) under the AFA Program under the BSAI and GOA FMPs, and NMFS manages vessels and License Limitation Program (LLP) licenses subject to sideboard limits under the CR Program under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). The North Pacific Fishery Management Council (Council) prepared these FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the BSAI and GOA FMPs are located at 50 CFR part 679. Regulations implementing the Crab FMP are located at 50 CFR part 680. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Background

This proposed rule includes two related actions. The first action would revise regulations at § 679.64 and § 680.22 for sideboard limits that apply to two categories of vessels that operate in the BSAI or GOA: (1) AFA catcher/processors (C/Ps) listed in regulation at § 679.4(l)(2)(i) (described as AFA C/Ps in this proposed rule), and AFA catcher vessels (CVs) permitted to harvest Bering Sea pollock as established in regulation at § 679.4(l)(3); and (2) vessels and LLP licenses subject to sideboard restrictions in the GOA based on criteria as established in regulation at § 680.22(a) under the CR Program. This first action would prohibit directed fishing for groundfish species or species groups that are subject to sideboard limits that are not large enough to support directed fishing as that term is defined at § 679.2. In addition, under the first action, this proposed rule would remove a sideboard limit at § 679.64(a)(1)(ii)(B) for AFA C/Ps in one management area (Central Aleutian Islands (AI)) for one species (Atka mackerel) that is currently subject to a more restrictive limit under existing regulations at 50 CFR 679.91(c)(2)(ii) and Table 33 to 50 CFR part 679.

The first action under this proposed rule is necessary to streamline and simplify NMFS's management of applicable groundfish sideboard limits. NMFS calculates numerous AFA Program and CR Program sideboard limits as part of the annual BSAI and GOA harvest specifications process and publishes these limits in the **Federal Register**. Concurrently, NMFS prohibits directed fishing for the majority of the groundfish subject to these sideboard limits because most sideboard limits are too small each year to support directed fishing. The most recent example of the annual BSAI and GOA harvest specifications with the AFA Program and CR Program sideboard limits can be found at 83 FR 8365, February 27, 2018, for the BSAI, and at 83 FR 8768, March 1, 2018, for the GOA. Rather than continue this annual process of calculating all sideboard limits and then closing most to directed fishing, the first action of this proposed rule would revise regulations to prohibit directed fishing by non-exempt AFA Program and CR Program vessels for those groundfish species and species groups subject to sideboard limits if those species or species groups have not been opened to directed fishing or are not expected to be opened to directed fishing in the foreseeable future (see Section 2.7 of the Analysis for additional detail on the management of AFA Program and CR Program sideboard limits). Also, NMFS would cease calculating and publishing each year the relevant sideboard limits and their corresponding directed fishing prohibitions in the BSAI and GOA groundfish harvest specifications.

The second action of this proposed rule would remove the requirement for the designated representatives of AFA inshore cooperatives (described later in this preamble) to submit a weekly catch report described in regulation at §§ 679.5(o) and 679.62(b)(3). NMFS proposes to remove this requirement because the information in the weekly catch report is collected by NMFS through other recordkeeping and reporting requirements, and this weekly catch report is no longer necessary for NMFS to manage the AFA inshore pollock allocations.

This first action of this proposed rule was initiated after the Council received a report on the AFA Program in October 2016. As part of the review, NMFS identified potential improvements in the management of the AFA Program by streamlining and simplifying the management of the sideboard limits included under the AFA: NMFS recommended revising regulations to prohibit directed fishing by AFA vessels for those species or species groups (and any future break-out or combination of these species) where the sideboard limits are not large enough to support directed fishing and would not be large enough in the foreseeable future to support directed fishing. During subsequent review of this proposed action, NMFS expanded the scope of the review to include an analysis of revising regulations to prohibit crab vessels in the CR Program from directed fishing in the GOA for those species with sideboard limits that are not large enough to support directed fishing and would not be large enough in the foreseeable future to support directed fishing. At its February 2018 meeting, the Council selected Alternative 2 and Option 1 as its preferred recommendation to the Secretary of Commerce. The Council's recommendation, implemented through this proposed rule, would prohibit directed fishing by regulation for all species or species groups with insufficient sideboard limits for directed fishing by vessels in both AFA and CR Programs, and would remove from regulation the sideboard limit on AFA C/Ps for Central AI Atka mackerel harvest because the harvest of Central AI Atka mackerel by AFA C/Ps is constrained by other, existing regulations.

The following discussion summarizes groundfish sideboard limits, the AFA Program and AFA sideboard limits, the CR Program and CR Program sideboard limits, the annual harvest specifications process and the management of AFA Program and CR Program sideboard limits through that annual process, AFA Inshore Cooperative reporting requirements, and this proposed rule.

Groundfish Sideboard Limits

The Council and NMFS generally establish catch limits, commonly called sideboard limits, when implementing Limited Access Privilege Programs (LAPP). The term ''Limited Access Privilege'' is defined in section 3(26) of the Magnuson-Stevens Act (16 U.S.C. 1802). Sideboard limits are intended to prevent participants who benefit from receiving exclusive harvesting privileges in a LAPP from shifting effort into other fisheries. Sideboard limits establish limits on the annual amount of a particular groundfish total allowable catch (TAC) limit or prohibited species catch (PSC) limit that is available for participants in a given LAPP.

The AFA Program and AFA Program Sideboard Limits

The Bering Sea pollock fishery is managed under the authority of the AFA (16 U.S.C. 1851 note) and the Magnuson-Stevens Act. The AFA Program is a LAPP that established in the Bering Sea pollock fishery directed fishing allocations to an inshore and an offshore component (commonly called the inshore and offshore sectors). The AFA also determined eligible vessels and processors in the Bering Sea pollock fishery; allowed the formation of cooperatives of catcher vessels in association with specific processors in the inshore sector; established sideboard limits; and imposed special catch weighing and monitoring requirements on AFA C/Ps. The AFA was implemented by Amendment 61 to the BSAI FMP, Amendment 61 to the GOA FMP, Amendment 13 to the Crab FMP, and Amendment 8 to the Fishery Management Plan for the Scallop Fishery off Alaska (67 FR 79692; December 30, 2002). The final rule implementing the AFA (67 FR 79692, December 30, 2002) and Section 2.7.1 of the Analysis describe the AFA Program in detail and the basis for the sideboard limits established under the AFA Program.

The final rule implementing the AFA established several different types of sideboard limits for vessels that are authorized to harvest pollock in the Bering Sea. These sideboard limits were established to protect the interests of fishermen and processors who do not directly benefit from the AFA from those fishermen and processors who received exclusive harvesting and processing privileges under the AFA. Essentially, the AFA Program sideboard limits protect non-AFA fishermen and processors by restricting the ability of AFA pollock fishermen and processors to target non-pollock groundfish species and species groups. Some of these sideboard limits were implemented through directed fishing closures in regulations, such as setting the Atka mackerel harvest limit to zero in the Bering Sea subarea and Eastern AI (§ 679.64(a)(1)(ii)(A)). Others were implemented through sideboard limits established through the annual harvest specifications process, which is described later in this preamble.

Section 679.7(k)(1)(ii) prohibits listed AFA C/Ps from harvesting any species of fish in the GOA. Section 679.64(a)(1) establishes sideboard limits for AFA C/Ps for Aleutian Islands Pacific ocean perch (§ 679.64(a)(1)(i)); Atka mackerel (§ 679.64(a)(1)(ii)); flathead sole, rock sole, and yellowfin sole (§ 679.64(a)(1)(iii)); and for the remaining groundfish species (§ 679.64(a)(1)(iv)). Section 679.64(a)(1)(v) establishes an exemption to sideboard limits for AFA C/Ps for yellowfin sole under specific TAC conditions. Section 679.64(a)(2) establishes specific sideboard limits for Pacific halibut and crab incidentally harvested by AFA C/Ps while fishing for groundfish in the BSAI. The methodologies used to assign sideboard limits for these species vary and are described in § 679.64(a).

Section 679.64(a)(1)(ii)(B) establishes a sideboard limit for Central AI (also referred to as Area 542 in regulation) Atka mackerel that is equal to 11.5 percent of the annual TAC for Atka mackerel. In 2007, NMFS implemented the Amendment 80 Program (72 FR 52668, September 14, 2007). The Amendment 80 Program modified the management of several non-pollock species in the BSAI that are subject to sideboard limits under the AFA Program. Under regulations that implemented the Amendment 80 Program, no more than 10 percent of the Central AI Atka mackerel TAC may be harvested by vessels other than Amendment 80 vessels, which are designated as the BSAI trawl limited access sector and include AFA C/Ps (§ 679.91(c)(2)(ii) and Table 33 to 50 CFR part 679). Therefore the maximum amount of the Central AI Atka mackerel TAC available to AFA C/Ps under regulations implementing Amendment 80 (10 percent) is less than the sideboard limit established for AFA C/Ps when the AFA Program was implemented in 2000 (11.5 percent). By constraining the AFA C/Ps directed fishing for Central AI Atka mackerel, the more restrictive allocation of TAC under the Amendment 80 Program is, effectively, a conservation and management measure that operates similar to the larger sideboard limit established for Central AI Atka mackerel under the AFA groundfish sideboard regulations. Additional detail on the Amendment 80 Program is provided in the final rule for that program (72 FR 52668, September 14, 2007).

Section 679.64(b) establishes sideboard limits for AFA CVs. Section 679.64(b)(3)(i) through (iii) establishes sideboard limits for groundfish in the BSAI using a variety of methods that depend on the species (*e.g.,* the method for calculating the sideboard limit for BSAI Pacific cod differs from yellowfin sole). These methods are described at § 679.64(b)(3)(i) for BSAI groundfish other than Amendment 80 species; at § 679.64(b)(3)(ii) for BSAI Pacific cod; and at § 679.64(b)(3)(iii) for Amendment 80 species other than Pacific cod. Section 679.64(b)(3)(iv) establishes sideboard limits for AFA CVs for groundfish species in the GOA. The final rule implementing the AFA Program provides additional information on the management of sideboard limits for AFA CVs (67 FR 79692, December 30, 2002).

Section 679.64(b)(2) exempts specific AFA CVs from sideboard limits in the BSAI (§ 679.64(b)(2)(i)) and the GOA (§ 679.64(b)(2)(ii)) based on criteria described in § 679.64(b)(2). These exemptions are intended to provide opportunities for vessels that have historically fished in the BSAI or GOA for species other than pollock, but that also have some limited participation in the Bering Sea pollock fisheries. This proposed rule would not affect the management of exempt AFA catcher vessels.

The CR Program and CR Program Sideboard Limits

The CR Program is a LAPP that allocates nine BSAI crab species among harvesters, processors, and coastal communities. Participants in the CR Program receive exclusive harvesting and processing privileges for a portion of the annual TAC established for each crab fishery under the CR Program. The final rule implementing the CR Program describes the different elements of the program, including groundfish sideboard limits in the GOA for vessels and LLP licenses that received allocations of exclusive harvesting privileges (quota share) under the CR Program (70 FR 10174, March 2, 2005). These sideboard limits were developed to protect participants in other non-CR Program groundfish fisheries from increased participation by CR Program vessels in the GOA, as discussed in Section 2.7.2 of the Analysis. Essentially, the CR Program sideboard limits protect non-CR Program participants by restricting the ability of CR Program participants to target non-crab fisheries (*i.e.,* GOA groundfish fisheries).

CR Program sideboard limits are established for a variety of species and species groups and gear types, including pot, hook-and-line, jig, and trawl gear. CR Program sideboard limits are only applicable in the GOA. Section 680.22 establishes groundfish sideboard limits for vessels and LLP licenses with a history of participation in the Bering Sea snow crab (*Chionoecetes opilio*) fishery. Sideboard harvest limits restrict these vessels' catch to their collective historical landings in each GOA groundfish fishery. Sideboard limits also apply to landings made using an LLP license derived from the history of a restricted vessel, even if that LLP license is used on another vessel. CR Program sideboard limits do not apply to AFA catcher vessels because these vessels already are subject to GOA sideboard limits under the AFA Program.

Various final rules implementing provisions of the CR Program describe the basis for these sideboard harvest limits. These final rules include Amendments 18 and 19 to the Crab FMP (70 FR 10174, March 2, 2005), Amendment 34 to the Crab FMP (76 FR 35772, June 20, 2011), Amendment 83 to the GOA FMP (76 FR 74670, December 1, 2011), and Amendment 45 to the Crab FMP (80 FR 28539, May 19, 2015).

Annual Harvest Specifications Process and the Management of AFA Program and CR Program Sideboard Limits

NMFS establishes the overfishing level, acceptable biological catch (ABC), and TAC for each species or species group through the annual groundfish harvest specifications process. NMFS allows vessels to retain incidental catch of species (if the TAC has not been reached) taken in other directed fisheries that are open, up to the maximum retainable amount (MRA) allowed in regulation (§ 679.20(e)). If a species is closed to directed fishing, and the TAC for that species is reached, NMFS prohibits retention of that species, and all catch of that species must be discarded. A MRA is calculated as a percentage of the retained amount of a species that is closed to directed fishing, relative to the retained amount of basis species or species groups open to directed fishing. Amounts that are caught greater than a particular MRA percentage must be discarded.

In the annual harvest specifications, NMFS calculates sideboard limits for the AFA Program and the CR Program fisheries by multiplying a fixed ratio against the annual TAC or portion of the TAC for each BSAI and GOA groundfish species or species group. These ratios are derived based on the specific regulations described earlier in this preamble. The annual sideboard limit for most BSAI and GOA groundfish species is an amount that is much smaller than the overall TAC for each species. For the most recent example of the annual groundfish harvest specifications and associated AFA Program and CR Program sideboard limits, see the final 2018 and 2019 harvest specifications for the BSAI and GOA (83 FR 8365, February 27, 2018, and 83 FR 8768, March 1, 2018, respectively).

Consistent with regulations at §§ 679.64 and 680.22, NMFS manages the AFA Program and CR Program sideboard limits by establishing directed fishing closures for a species or species group subject to a sideboard limit. This closure could happen during the fishing year if a particular sideboard limit is reached. Alternatively, NMFS may issue a directed fishing closure in the harvest specifications prior to the fishing year, if the sideboard limit is not sufficient to support directed fishing for a species or species group. NMFS has prohibited directed fishing for the majority of AFA CV and C/P sideboard limits since the initial implementation of the AFA Program implementation in 2000 (65 FR 4520, January 28, 2000). NMFS also has prohibited directed fishing for the majority of CR Program sideboard limits in the GOA since CR Program was implemented in 2006. Directed fishing prohibitions have been issued because the sideboard limits for most species were insufficient to provide for both directed fishing of a species and incidental catch of that same species in other target fisheries.

Section 2.7.1 of the Analysis describes the groundfish species subject to AFA CV and C/P sideboard limits that have been closed to directed fishing each year in the annual harvest specifications, and the limited number of groundfish species that have sideboard limits that have been sufficiently large to allow for directed fishing. Section 2.7.2 of the Analysis describes the groundfish species in the GOA subject to CR Program sideboard limits that have been closed to directed fishing each year in the annual harvest specifications, and the one groundfish species (Pacific cod) and gear type (pot) that has sideboard limits that have been sufficiently large to allow for directed fishing.

AFA Inshore Cooperative Weekly Catch Report Requirements

In addition to the Council's recommendations for proposed revisions to AFA Program and CR Program sideboard limits, NMFS also proposes to remove the requirement for the designated representatives of AFA inshore cooperatives to submit a weekly catch report described in regulation at §§ 679.5(o) and 679.62(b)(3) because this report is no longer necessary to manage the AFA inshore pollock allocations. NMFS obtains the necessary information required on the AFA inshore cooperative weekly report through other reporting requirements at § 679.5(e). Removing this reporting requirement would reduce costs for the public to prepare and submit the weekly reports and for NMFS to review and process those weekly reports.

Proposed Rule

Action 1: Establishing Sideboard Limits in Regulation

Under Action 1, NMFS would no longer publish AFA Program or CR Program sideboard amounts for specific species or species groups in the **Federal Register** as part of the annual groundfish harvest specifications, but would specify in regulation those species with sideboard limits that are subject to a directed fishing closure. Specification through regulation of these directed fishing closures will streamline and simplify NMFS's management of these applicable groundfish sideboard limits. NMFS would no longer need to calculate the applicable sideboard limits, prepare the necessary tables, and publish those sideboard limits and their corresponding directed fishing prohibitions each year in the BSAI and GOA groundfish harvest specifications. This will reduce staff time and annual costs to prepare and publish the BSAI and GOA groundfish harvest specifications.

This proposed rule would not modify the ability of sideboard-restricted vessels to retain incidental catch of species closed to directed fishing while targeting other species. Vessels are allowed to retain incidental catch of species up to the MRA if the TAC of that species has not been reached, and once the TAC is reached, all retention of that species is prohibited. The regulations governing incidental catch, MRAs, and PSC status apply when a species is closed to directed fishing, whether closed to directed fishing through the annual BSAI and GOA harvest specifications or through a specific regulation. Accordingly, under this proposed rule, sideboard restricted vessels will remain subject to the same regulations governing the incidental catch of species or species groups with sideboard limits that are closed to directed fishing, and this proposed rule would not change NMFS's inseason management of sideboard limits. Moreover, the proposed approach that continues directed fishing closures for sideboard limits for AFA and CR Program vessels would continue to protect non-AFA and non-CR Program participants in other fisheries, in accordance with the original intent of creating sideboard limits (see Section 2.7.1 and 2.7.2 of the Analysis).

This proposed rule would affect the sideboard limits for AFA CVs in the BSAI, AFA CVs in the GOA, AFA C/Ps in the BSAI, and non-AFA crab vessels in the GOA. For AFA CVs fishing in the BSAI, NMFS sets sideboard limits for 16 different groundfish species or species groups; however, in the annual harvest specifications, NMFS has closed most sideboard species to directed fishing by AFA CVs. Often, the sideboard amounts for these species are insufficient to support a directed fishery by the AFA CVs that are subject to the sideboard limit. Also, some sideboard species are not opened to AFA CVs for directed fishing because the species is fully allocated to the Amendment 80 Program (*e.g.,* flathead sole, rock sole) or because there are no PSC sideboard limits apportioned to support directed fishing (*e.g.,* Greenland turbot, arrowtooth flounder, Kamchatka flounder). A list of BSAI species or species groups with sideboard limits that are proposed to be closed in regulation to directed fishing by AFA CVs is provided in Table 2–5 of the Analysis. In the BSAI, AFA CVs have historically targeted two sideboard-limited species (Pacific cod and yellowfin sole), and this proposed rule would not change the management of those sideboard fisheries that have opened for directed fishing in the past and that likely would continue to support a directed fishery for those species and for certain gear types for Pacific cod (see Table 2–6 of the Analysis).

Similarly, for AFA CVs fishing in the GOA, NMFS sets sideboard limits for different groundfish species or species groups, and through the harvest specifications NMFS closes many of those sideboard species to directed fishing by AFA CVs. In the GOA, many of the sideboards amounts cannot support a directed fishery by the AFA CVs that are subject to the sideboard limits. A list of the GOA species or species groups with sideboard limits that are proposed to be closed in regulation to directed fishing by AFA CVs is provided in Table 2–7 of the Analysis, while Table 2–8 of the Analysis lists those sideboard limits that will remain open to directed fishing because the sideboard limits for those species have been sufficient and likely will remain sufficient to support a directed fishery by AFA CVs.

For AFA C/Ps in the BSAI, many of the BSAI groundfish harvesting sideboards are also not open for directed fishing, for reasons similar to the management of AFA CVs in the BSAI. First, many of the sideboard limits are insufficient to support a directed fishery by the AFA C/Ps that are subject to the sideboard limit. In addition, some sideboards for AFA C/Ps are not available for directed fishing because the species is fully allocated to the Amendment 80 Program (*e.g.,* flathead sole, rock sole, Western AI Atka mackerel) or because there are no PSC limits apportioned to support directed fishing. A list of the BSAI species or species groups with sideboard limits that are proposed to be closed in regulation to directed fishing by AFA C/Ps is provided in Table 2–9 of the Analysis, while Table 2–10 of the Analysis lists those sideboard limits that will remain open to directed fishing because the sideboard limits for those species have been sufficient and likely will remain sufficient to support a directed fishery by AFA C/Ps.

As explained earlier, the CR Program regulations establish sideboard limits to restrict the ability of non-AFA crab vessels to target groundfish species and species groups in the GOA. Since implementation of the CR Program sideboard limits in 2006, the only sideboard limits large enough to support directed fishing have been the Western and Central GOA Pacific cod pot catcher vessel sideboard limits, and in some years the Western GOA Pacific cod pot catcher/processor sideboard limit. All other sideboard limits have been closed for directed fishing because they are not sufficient to provide for a directed fishery by crab vessels. A list of the GOA sideboard limits that would be replaced with a prohibition on directed fishing is provided in Table 2–11 of the Analysis, while Table 2–12 shows sideboard limits for those Western and Central GOA Pacific cod pot catcher vessels that would not be affected by the proposed action and that likely would remain open for directed fishing.

In both the BSAI and GOA, many of the sideboard limits are not large enough to support a directed fishery by AFA CVs and C/Ps and crab vessels, which means that NMFS cannot actively manage those fisheries to ensure a timely closure and prevent retention in excess of the TAC set for that year. It is highly unlikely that the TACs of any of the sideboard species would increase significantly enough in the foreseeable future to result in a large enough sideboard limit to allow directed fishing of the sideboard allowance. Because factors such as TAC are not likely to change significantly enough to provide AFA vessels and crab vessels with groundfish sideboard limits sufficient to support a directed fishery, NMFS has determined it would be more efficient to close those sideboard limits to directed fishing in regulation, rather than continuing to specify those sideboard limits and close them to directed fishing every year through the annual harvest specifications.

Accordingly, under Action 1, this proposed rule would implement the Council's recommendation (Option 1 to Alternative 2, the preferred alternative) to:

- Prohibit directed fishing for most AFA Program and CR Program groundfish sideboard limits by adding Tables 54, 55, and 56 to 50 CFR part 679 to list the AFA Program sideboard species prohibited to directed fishing; and by adding Table 11 to 50 CFR part 680 to list the CR Program sideboard species prohibited to directed fishing;
- remove a regulation (§ 679.64(a)(1)(ii)(B)) establishing the annual Central AI Atka mackerel sideboard limit for AFA C/Ps; and
- make other minor regulatory amendments necessary to establish directed fishery closures for specific species and species groups in regulation.

This proposed rule would revise § 679.20(d) by adding a new paragraph to prohibit directed fishing for the species sideboard limits listed in proposed Tables 54, 55, and 56 to 50 CFR part 679. Existing regulations associated with establishing sideboard directed fishing allowances would be retained, as they are needed for those species or species groups that would continue to have sideboard limits established through the annual harvest specifications. In addition, § 679.64(a)(3) would be revised to add a paragraph describing that proposed Table 54 to 50 CFR part 679 contains the BSAI species or species groups prohibited for directed fishing by AFA C/Ps. Similarly, § 679.64(b)(5) would be revised to add a paragraph that describes proposed Tables 55 and 56 to 50 CFR part 679. These two tables list the species or species groups for which directed fishing by AFA CVs is prohibited in the BSAI and GOA, respectively.

Regarding the Central AI Atka mackerel sideboard limit for AFA C/Ps, this proposed rule would remove § 679.64(a)(1)(ii)(B). That regulation specifies the AFA C/Ps Central AI Atka mackerel sideboard limit of 11.5 percent of the annual Central AI TAC, which is based on the sideboard limit set forth in Section 211(b)(2)(C)(i)) of the AFA. However, since the implementation of the Amendment 80 Program in 2008, the percentage of the initial TAC for the sector in which AFA C/Ps are authorized to participate (the BSAI trawl limited access sector) is only 10 percent. Therefore, the maximum amount of the Central AI Atka mackerel TAC available to AFA C/Ps under regulations implementing Amendment 80 (10 percent) is less than the sideboard limit established for AFA C/Ps when the AFA Program was implemented in 2000 (11.5 percent). Since the BSAI trawl limited access sector allocation is less than the sideboard limit, the sideboard limit no longer constrains AFA C/Ps. NMFS believes that the proposed revision to remove the regulation that specifies the sideboard limit for Central AI Atka mackerel for AFA C/Ps is consistent with Section 211 of the AFA. Section 211(a) of the AFA allows the Council to recommend, and NMFS to approve, conservation and management measures necessary to protect other fisheries from the adverse impacts caused by the AFA. The current allocation of Atka mackerel available to AFA C/Ps (10 percent of the TAC) is effectively a conservation and management measure that protects participants in other non-AFA fisheries by limiting the amount of Atka mackerel that AFA C/Ps can potentially harvest to less than 11.5 percent of the TAC available to AFA C/Ps under the existing sideboard limit established under Section 211(b)(2)(C)(i) of the AFA. Under the proposed rule, NMFS would no longer specify the AFA C/P sideboard limit for Central AI Atka mackerel; however, that fishery would remain open to directed fishing, and AFA C/Ps as part of the BSAI trawl limited access sector would remain constrained under existing regulations to harvesting up to the 10 percent of the allocation to the BSAI trawl limited access sector (50 CFR 679.91(c)(2)(ii) and Table 33 to 50 CFR part 679).

For the CR Program sideboard limits, this proposed rule would revise § 680.22(e) to describe the permanent prohibition for directed fishing for most GOA groundfish species by non-AFA crab vessels in the GOA. This paragraph would include a reference to proposed Table 11 to 50 CFR part 680, which lists the species or species groups for which directed fishing for sideboard limits is prohibited.

Action 2: Removal of the AFA Inshore Cooperative Catch Report From Regulation

In addition to the Council's recommendation for revising the management of AFA Program and CR Program sideboard limits, NMFS also proposes to remove the requirements for the AFA inshore cooperative weekly catch report described in regulations at §§ 679.5(o) and 679.62(b)(3). This report is no longer necessary to manage the AFA inshore pollock allocations. NMFS has direct and immediate access to observer and landings data to track catch by the cooperatives and does not need the information submitted by the cooperatives to monitor the Bering Sea pollock fisheries. Eliminating this weekly reporting requirement will reduce the burden on the designated representatives of AFA inshore cooperatives to prepare and submit these reports to NMFS weekly, will reduce costs to the members of the AFA inshore cooperatives to pay for the preparation and submission of these weekly reports, and will reduce the time and costs that NMFS incurs in processing and reviewing the weekly reports.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the BSAI FMP, the GOA FMP, the Crab FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

Regulatory Impact Review (RIR)

An RIR was prepared to assess the costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended the regulatory revisions in this proposed rule based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis related to the impact of this proposed rule on small entities are discussed below in the Initial Regulatory Flexibility Analysis section.

Initial Regulatory Flexibility Analysis (IRFA)

This IRFA was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), to describe the economic impact this proposed rule, if adopted, would have on small entities. An IRFA describes why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives, consistent with applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of this proposed rule, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here.

Number and Description of Small Entities Regulated by This Proposed Rule

NMFS has determined that vessels that are members of a fishing cooperative are affiliated when classifying them for the RFA analyses. In making this determination, NMFS considered the Small Business Administration's (SBA) ''principles of affiliation'' at 13 CFR 121.103. Specifically, in § 121.103(f), SBA refers to ''[a]ffiliation based on identity of interest,'' which states affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated. If business entities are affiliated, then the threshold for identifying small entities is applied to the group of affiliated entities rather than on an individual entity basis.

There are 93 active AFA catcher vessels that are restricted by sideboard limits in the BSAI and GOA, 17 active catcher/processors that are restricted by sideboard limits in the BSAI, and 95 CR Program active catcher vessels that are restricted by sideboard limits in the GOA. These vessels are members of an AFA cooperative for Bering Sea pollock or a Bering Sea Crab Cooperative and are therefore considered to be large entities via their cooperative affiliation. Other than these vessels, there are 18 vessels that are restricted by sideboard limits in the BSAI and GOA and that are not members of an AFA or crab cooperative. These 18 vessels may be considered small entities under the RFA because they likely have combined annual gross receipts not in excess of $11.0 million.

This proposed rule would directly regulate those vessel operators that are restricted by AFA Program and CR Program groundfish sideboard limits in the BSAI and GOA, and AFA inshore cooperatives that are required to submit an AFA inshore cooperative weekly report. All persons required to submit an AFA inshore cooperative weekly report are also subject to sideboard limits under the AFA Program. Therefore, the number of directly regulated entities under this proposed rule is equal to the number of vessel operators restricted by AFA Program and CR Program groundfish sideboard limits in the BSAI and GOA. The thresholds applied to determine if an entity or group of entities are ''small'' under the RFA depend on the industry classification for the entity or entities. Businesses classified as primarily engaged in commercial fishing are considered small entities if they have combined annual gross receipts not in excess of $11.0 million for all affiliated operations worldwide (81 FR 4469; January 26, 2016). Businesses classified as primarily engaged in fish processing are considered small entities if they employ 750 or fewer persons on a full-time, part-time, temporary, or other basis, at all affiliated operations worldwide. Since at least 1993, NMFS Alaska Region has considered catcher/processors to be predominantly engaged in fish harvesting rather than fish processing. Under this classification, the threshold of $11.0 million in annual gross receipts is appropriate.

Based on this analysis, NMFS preliminarily determines that there are 18 entities that may be considered small and would be affected by this proposed rule. However, due to the complexity of the affiliation among the entities and the overlay of affiliation due to ownership and affiliation based on the contractual relationship among members of cooperatives, it is not certain these 18 entities are small entities, as defined by the RFA, that could be affected by this proposed rule. Nonetheless, NMFS has prepared this IRFA, which provides potentially affected small entities an opportunity to provide comments on this IRFA. NMFS will evaluate any comments received on the IRFA and may consider certifying under section 605 of the RFA (5 U.S.C. 605) that this action will not have a significant economic impact on a substantial number of small entities prior to publication of the final rule.

The only potential adverse economic impacts on directly regulated small entities that have been identified for this proposed rule are if the ABC and corresponding TAC for the species for which directed fishing would be closed significantly increased. With respect to potential changes in ABCs and TACs, NMFS does not anticipate that there will be significant increases to the groundfish species' ABCs and TACs associated with this action to the degree that the increases could allow for a directed fishery for a given species. Sideboard limits represent a very small proportion of a given annual groundfish TAC. If a particular species' biomass, ABC, and TAC increased to a level that could potentially allow for a directed fishery for that species' sideboard limit, such a substantial change in biomass and harvest control rules would also give rise to other potential management considerations beyond just increasing sideboard limits. With regards to the potential that the Amendment 80 Program allocations of groundfish (specifically Central AI Atka mackerel) could change, NMFS considers that prospect highly unlikely. The AFA and Amendment 80 fishery management programs in the BSAI are currently stable. The groundfish allocations established by these programs have not been modified since they were implemented, and there are no foreseeable changes in the allocations established under the Amendment 80 Program. If such allocative changes were proposed, the Council and NMFS would conduct a comprehensive analysis as part of any potential future action of how such changes could affect the sideboard limits associated with this action.

Recordkeeping, Reporting, and Other Compliance Requirements

This proposed rule would remove a recordkeeping and reporting requirement for the submittal of AFA inshore cooperative weekly catch reports. Such reports are no longer necessary to assist NMFS with managing the AFA inshore pollock fisheries, as the information in such reports has been superseded by more contemporary, electronic data reporting. The proposal to remove these requirements is anticipated to reduce the cost in total to the public by approximately $8,475 per year, and is anticipated to reduce costs to NMFS by approximately $5,400 per year.

No small entity is subject to reporting requirements that are in addition to or different from the requirements that apply to all directly regulated entities.

Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this proposed rule and existing Federal rules has been identified.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

No significant alternatives were identified that would accomplish the stated objectives for streamlining the management of AFA and CR Program sideboard limits by prohibiting in regulation certain species sideboard limits, are consistent with applicable statutes, and that would reduce costs to potentially affected small entities more than the proposed rule. The Council and NMFS considered two alternatives for action one of this proposed rule. Alternative 1 is the no action alternative. This alternative would continue the annual establishment of the sideboard limits for all the species listed in proposed Tables 54, 55, and 56 to 50 CFR part 679, as well as proposed Table 11 to 50 CFR part 680, and would maintain the sideboard limit for Central AI Atka mackerel for AFA C/Ps. These sideboard species have insufficient sideboard limits to support directed fishing, are fully allocated to other catch share programs, or for a variety of other reasons are closed to directed fishing. NMFS would continue to prohibit directed fishing for these sideboard fisheries via the annual harvest specifications, except for the Central AI Atka mackerel sideboard limit for AFA C/Ps.

Alternative 2, along with Option 1 (the preferred alternative), provides the greatest economic benefits. The primary economic benefit of this proposed rule is to reduce NMFS's administrative burden of managing most AFA Program and CR Program sideboards through the annual harvest specifications process. Implementation of Alternative 2 through this proposed rule would streamline the preparation of the BSAI and GOA annual harvest specifications, simplify NMFS's annual programming changes to the groundfish catch accounting system, and reduce the future costs of publishing the annual harvest specifications in the **Federal Register** each year. The economic effects on fishery participants that are affected by this proposed action primarily are neutral. The removal of the AFA inshore cooperative weekly catch report requirement would, however, provide a modest economic benefit for AFA inshore cooperatives.

Collection-of-Information Requirements

This proposed rule addresses a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0401 (AFA Reports). The proposed rule would not add any new information collection requirements, but would remove the regulatory requirement for the AFA inshore cooperative weekly catch report. The public reporting burden for the AFA inshore cooperative weekly catch report is estimated to average 45 minutes per response, which includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The proposal to remove this collection of information requirement has been submitted to OMB for approval.

Public comment is sought regarding the proposal to remove the requirement for the AFA inshore cooperative weekly catch report and the burden hour estimate for this report. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region (see **ADDRESSES**) and to OIRA by email to *OIRA_Submission@omb.eop.gov* or by fax to (202) 395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at *http://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 680

Alaska, Reporting and recordkeeping requirements.

Dated: August 9, 2018.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 and part 680 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

§ 679.5 Recordkeeping and reporting (R&R) [Amended]

■ 2. In § 679.5, remove and reserve paragraph (o).

■ 3. In § 679.20, add paragraph (d)(1)(iv)(D) to read as follows:

§ 679.20 General limitations.

* * * * *

(d) * * *

(1) * * *

(iv) * * *

(D) Species or species groups for which directed fishing for sideboard limits by AFA vessels is prohibited are listed in Tables 54, 55, and 56 to this part.

* * * * *

§ 679.62 Inshore sector cooperative allocation program [Amended]

■ 4. In § 679.62, remove paragraph (b)(3).

■ 5. In § 679.64,

■ a. Revise paragraph (a)(1)(ii)(A);

■ b. Remove paragraph (a)(1)(ii)(B);

■ c. Redesignate paragraph (a)(1)(ii)(C) as paragraph (a)(1)(ii)(B); and

■ d. Revise paragraphs (a)(3) and (b)(5) to read as follows:

§ 679.64 Harvesting sideboard limits in other fisheries.

(a) * * *

(1) * * *

(ii) * * *

(A) Bering Sea subarea and Eastern Aleutian Islands, zero; and

* * * * *

(3) *How will AFA catcher/processor sideboard limits be managed?* (i) The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits for AFA catcher/processors through directed fishing closures in fisheries established under paragraph (a)(1) of this section in accordance with the procedures set out in §§ 679.20(d)(1)(iv) and 679.21(b)(4)(iii).

(ii) Directed fishing for the BSAI groundfish sideboard limits listed in Table 54 of this part is prohibited.

* * * * *

(b) * * *

(5) *How will catcher vessel sideboard limits be managed?* (i) The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits

for AFA catcher vessels using directed fishing closures according to the procedures set out at §§ 679.20(d)(1)(iv) and 679.21(d)(7) and (e)(3)(v).

(ii) Directed fishing for the BSAI groundfish sideboard limits listed in Table 55 of this part and the GOA groundfish sideboard limits listed in Table 56 of this part is prohibited.

* * * * *

■ 6. Add and reserve Table 52 to part 679.

■ 7. Add and reserve Table 53 to part 679.

■ 8. Add Table 54 to part 679 to read as follows:

TABLE 54—BSAI SPECIES AND SPECIES GROUPS FOR WHICH DIRECTED FISHING FOR SIDEBOARD LIMITS BY LISTED AFA CATCHER/PROCESSORS AND CATCHER/PROCESSORS DESIGNATED ON LISTED AFA CATCHER/PROCESSOR PERMITS IS PROHIBITED

Species or species group	Management area or subarea
Sablefish, trawl gear	Bering Sea (BS) subarea of the BSAI.
	Aleutian Islands (AI).
Atka mackerel	BS/Eastern Aleutian District.
	Western Aleutian District.
Rock sole	BSAI.
Greenland turbot	Bering Sea subarea of the BSAI.
	AI.
Arrowtooth flounder	BSAI.
Kamchatka flounder	BSAI.
Flathead sole	BSAI.
Alaska plaice	BSAI.
Other flatfish	BSAI.
Pacific ocean perch	Bering Sea subarea of the BSAI.
	Eastern Aleutian District.
	Central Aleutian District.
	Western Aleutian District.
Northern rockfish	BSAI.
Shortraker rockfish	BSAI.
Rougheye rockfish	Bering Sea subarea of the BSAI/Eastern Aleutian District.
	Central Aleutian District/Western Aleutian District.
Other rockfish	BS.
	AI.
Skates	BSAI.
Sculpins	BSAI.
Sharks	BSAI.
Octopuses	BSAI.

■ 9. Add Table 55 to part 679 to read as follows:

TABLE 55—BSAI SPECIES AND SPECIES GROUPS FOR WHICH DIRECTED FISHING FOR SIDEBOARD LIMITS BY NON-EXEMPT AFA CATCHER VESSELS IS PROHIBITED

Species or species group	Management area or subarea	Gear type
Pacific cod	BSAI	Jig.
		Hook-and-line catcher vessel ≥60 ft.
		Hook-and-line catcher vessel ≤60 ft.
		Pot.
Sablefish, trawl gear	Bering Sea subarea of the BSAI	All.
	AI	All.
Atka mackerel	BSAI	All.
Rock sole	BSAI	All.
Greenland turbot	BS	All.
	AI	All.
Arrowtooth flounder	BSAI	All.
Kamchatka flounder	BSAI	All.
Alaska plaice	BSAI	All.
Other flatfish	BSAI	All.
Flathead sole	BSAI	All.
Pacific ocean perch	BS	All.
	Eastern Aleutian District	All.
	Central Aleutian District	All.
	Western Aleutian District	All.
Northern rockfish	BSAI	All.
Shortraker rockfish	BSAI	All.
Rougheye rockfish	Bering Sea subarea of the BSAI/Eastern Aleutian District	All.
	Central Aleutian District/Western Aleutian District	All.
Other rockfish	Bering Sea subarea of the BSAI	All.
	AI	All.

TABLE 55—BSAI SPECIES AND SPECIES GROUPS FOR WHICH DIRECTED FISHING FOR SIDEBOARD LIMITS BY NON-EXEMPT AFA CATCHER VESSELS IS PROHIBITED—Continued

Species or species group	Management area or subarea	Gear type
Skates	BSAI	All.
Sculpins	BSAI	All.
Sharks	BSAI	All.
Octopuses	BSAI	All.

■ 10. Add Table 56 to part 679 to read as follows:

TABLE 56—GOA SPECIES AND SPECIES GROUPS FOR WHICH DIRECTED FISHING FOR SIDEBOARD LIMITS BY NON-EXEMPT AFA CATCHER VESSELS IS PROHIBITED

Species or species group	Management or regulatory area and processing component (if applicable)
Pacific cod	Eastern GOA, inshore component.
	Eastern GOA, offshore component.
	Western GOA.
Sablefish	Central GOA.
	Eastern GOA.
Shallow-water flatfish	Eastern GOA.
Deep-water flatfish	Western GOA.
Rex sole	Western GOA.
	Eastern GOA.
Arrowtooth flounder	Western GOA.
	Eastern GOA.
Flathead sole	Western GOA.
	Eastern GOA.
Pacific ocean perch	Western GOA.
Northern rockfish	Western GOA.
Shortraker rockfish	Western GOA.
	Central GOA.
	Eastern GOA.
Dusky rockfish	Western GOA.
	Central GOA.
	Eastern GOA.
Rougheye rockfish	Western GOA.
	Central GOA.
	Eastern GOA.
Demersal shelf rockfish	Southeast Outside District.
Thornyhead rockfish	Western GOA.
	Central GOA.
	Eastern GOA.
Other rockfish	Central GOA.
	Eastern GOA.
Atka mackerel	GOA.
	Western GOA.
Big skates	Central GOA.
	Eastern GOA.
Longnose skates	Western GOA.
	Central GOA.
	Eastern GOA.
Other skates	GOA.
Sculpins	GOA.
Sharks	GOA.
Octopuses	GOA.

* * * * *

PART 680—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 11. The authority citation for part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L., 109–241; Pub. L. 109–479.

■ 12. In § 680.22, revise paragraph (e)(1)(i) to read as follows:

§ 680.22 Sideboard protections for GOA groundfish fisheries

* * * * *

(e) * * *

(1) * * *

(i) Except as provided in paragraph (e)(1)(ii) of this section, annual sideboard harvest limits for each groundfish species, except fixed-gear sablefish, will be established by multiplying the sideboard ratios calculated under paragraph (d) of this section by the proposed and final TACs in each area for which a TAC is specified. If a TAC is further apportioned by season, the sideboard harvest limit also will be apportioned by season in the same ratio as the overall TAC. The resulting harvest limits expressed in metric tons will be published in the annual GOA groundfish harvest specification notices, except for those species for which directed fishing for sideboard limits is prohibited (see paragraph (e)(2)(ii) of this section and Table 11 to this part).

* * * * *

■ 13. Add Table 11 to part 680 to read as follows:

TABLE 11—GULF OF ALASKA SPECIES AND SPECIES GROUPS FOR WHICH DIRECTED FISHING FOR SIDEBOARD LIMITS BY NON-AFA CRAB VESSELS IS PROHIBITED

Species or species group	Management area or regulatory area, processing component (if applicable), and gear type (if applicable)	
Pollock	Shumagin (Management Area 610). Chirikof (Management Area 620). Kodiak (Management Area 630). Western Yakutat District. Southeast Outside District.	
	Area	Gear, vessel type
Pacific cod	Western GOA	Jig. Hook-and-line Catcher Vessel. Trawl Catcher Vessel.
	Central GOA	Jig. Hook-and-line Catcher Vessel. Trawl Catcher Vessel.
	Eastern GOA, inshore component. Eastern GOA, offshore component.	
Sablefish, trawl gear	Western GOA. Central GOA. Eastern GOA.	
Shallow-water flatfish	Western GOA. Central GOA. Eastern GOA.	
Deep-water flatfish	Western GOA. Central GOA. Eastern GOA.	
Rex sole	Western GOA. Central GOA. Eastern GOA.	
Arrowtooth Flounder	Western GOA. Central GOA. Eastern GOA.	
Flathead sole	Western GOA. Central GOA. Eastern GOA.	
Pacific ocean perch	Western GOA. Central GOA. Eastern GOA.	
Northern rockfish	Western GOA. Central GOA.	
Shortraker rockfish	Western GOA. Central GOA. Eastern GOA.	
Dusky rockfish	Western GOA. Central GOA. Eastern GOA.	
Rougheye rockfish	Western GOA. Central GOA. Eastern GOA.	
Demersal shelf rockfish	Southeast Outside District.	
Thornyhead rockfish	Western GOA. Central GOA. Eastern GOA.	

TABLE 11—GULF OF ALASKA SPECIES AND SPECIES GROUPS FOR WHICH DIRECTED FISHING FOR SIDEBOARD LIMITS BY NON-AFA CRAB VESSELS IS PROHIBITED—Continued

Other rockfish	Western/Central GOA. Eastern GOA.
Atka mackerel	GOA.
Big skates	Western GOA. Central GOA. Eastern GOA.
Longnose skates	Western GOA. Central GOA. Eastern GOA.
Other skates	GOA.
Sculpins	GOA.
Sharks	GOA.
Octopuses	GOA.

* * * * *

[FR Doc. 2018–17538 Filed 8–15–18; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 83, No. 159

Thursday, August 16, 2018

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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Arkansas Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold a meeting on Friday September 7, 2018 from 1–5 p.m. Central time. The Committee will hear public testimony as part of their study of civil rights and mass incarceration in the state.

DATES: The meeting will take place on Friday September 7, 2018 from 1–5 p.m. Central.

ADDRESSES: Holiday Inn Presidential, 600 I–30, Little Rock, AR 72202.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. An open comment period will be provided to allow members of the public to make a statement, beginning at 4 p.m. To request individual accommodations for persons with disabilities planning to attend, please contact the Regional Programs Unit at 312–353–8311 at least 10 days prior to the meeting. Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

The Committee will examine the State's growing prison population, and the disproportionately high incarceration rate of individuals of color relative to the general population. The Committee will consider state and local policies and practices which may contribute to these disparities, and seek alternative policies and practices with the demonstrated potential to address such concerns. The Committee will hear testimony from formerly incarcerated individuals, community members, advocates, academics, and public officials.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Arkansas Advisory Committee link (*https://www.facadatabase.gov/committee/meetings.aspx?cid=236*). Click on ''meeting details'' and then ''documents'' to download. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Opening Remarks and Introductions (1:00 p.m.–1:15 p.m.)
Panel 1: Community & Advocacy (1:15 p.m.–2:30 p.m.)
Panel 2: Academic & Legal (2:45 p.m.–4:00 p.m.)
Open Forum (4:00 p.m.–5:00 p.m.)
Closing Remarks (5:00 p.m.)

Dated: August 13, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–17705 Filed 8–15–18; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Illinois Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Illinois Advisory Committee (Committee) will hold a meeting on Wednesday September 5, 2018, at 11:30 a.m. CDT for the purpose of discussing civil rights concerns in the state.

DATES: The meeting will be held on Wednesday September 5, 2018, at 11:30 a.m. CDT.

Public Call Information: Dial: 877–857–6177, Conference ID: 5630719.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the call in information listed above. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement to the Committee as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 230 South Dearborn St., Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Illinois Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=246*). Select ''meeting details'' and then ''documents'' to download. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion: Civil Rights in Illinois
Public Comment
Future Plans and Actions
Adjournment

Dated: August 10, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–17643 Filed 8–15–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Ohio Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Ohio Advisory Committee (Committee) will hold a meeting via teleconference on Friday September 14, 2018, from 9 a.m.–4 p.m. EDT for the purpose of hearing testimony regarding civil rights and education funding in the state.

DATES: The meeting will be held on Friday September 14, 2018, from 9 a.m.–4 p.m. EDT.

ADDRESSES: Cleveland State University, Fenn Tower, 1938 E 24th Street, Cleveland, OH 44115.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. An open comment period will be provided to allow members of the public to make a statement, beginning at 4 p.m. To request individual accommodations for persons with disabilities planning to attend, please contact the Regional Programs Unit at 312–353–8311 at least 10 days prior to the meeting. Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

The Committee intends to examine Ohio's school funding formula and its impact on access to education on the basis of color, race, sex, religion, national origin, and/or disability status. The Committee will examine (a) the extent to which the state's school funding formula may contribute to a disparate impact on educational access and outcomes on the basis of these federally protected categories, (b) if the policies and practices are reasonably necessary to the education success of the students or other aspects of the education system, and (c) alternative policies and practices with the demonstrated potential to address such concerns. The Committee will hear testimony from community members, advocates, academics, public and private school administrators, and government officials.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Ohio Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=268*). Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit Office at the above email or street address.

Agenda

Opening Remarks and Introductions (9:00 a.m.–9:15 a.m.)
Panel 1: Academic (9:15 a.m.–10:45 a.m.)
Panel 2: Private Schools & Public Charter Schools (11:00 a.m.–12:30 p.m.)
Break (12:30 p.m.–1:30 p.m.)
Panel 3: Public Schools & Community (1:30 p.m.–3:00 p.m.)
Open Forum (3:00 p.m.–4:00 p.m.)
Closing Remarks (4:00 p.m.)

Dated: August 13, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–17706 Filed 8–15–18; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–877]

Stainless Steel Flanges From India: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstance Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of stainless steel flanges from India are being, or are likely to be, sold in the United States at less than fair value (LTFV) during the period of investigation (POI) July 1, 2016, through June 30, 2017.

DATES: Applicable August 16, 2018.

FOR FURTHER INFORMATION CONTACT: Benito Ballesteros or Christian Llinas, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7425 or (202) 482–4877, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 2018, Commerce published in the **Federal Register** the preliminary affirmative determination of sales at LTFV in the antidumping duty (AD) investigation of stainless steel flanges from India.[1] The Coalition of American Flange Producers and its individual members, Core Pipe Products, Inc. and Maass Flange Corporation (collectively, the petitioners), Chandan Steel Limited

[1] *See Stainless Steel Flanges from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures,* 83 FR 13246 (March 28, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

(Chandan), Bebitz Flanges Works Pvt. Ltd. (Bebitz) and Echjay Forgings Pvt. Ltd. (Echjay) (collectively, the respondents) filed case and rebuttal briefs. A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the accompanying Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document, and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to register users at *http://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov*. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is stainless steel flanges from India. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[3] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[4] As no interested parties submitted timely comments on the scope of this investigation, we made no changes to the scope language as it appeared in the *Initiation Notice*.

Period of Investigation

The period of investigation is July 1, 2016, through June 30, 2017.

Verification

As provided in section 782(i) of the Act, between April and May 2018, Commerce verified the sales and cost data reported by Chandan. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by the respondents.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by interested parties in this investigation are addressed in the Issues and Decision Memorandum. A list of these issues is attached to this notice at Appendix II.

Use of Facts Available and Adverse Facts Available

For purposes of this final determination, Commerce determined the Echjay single entity's[5] and the Bebitz/Viraj single entity's[6] margin on the basis of adverse facts available, pursuant to sections 776(a)(2)(B)–(C) and 776(b) of the Act. For further information, *see* the Issues and Decision Memorandum.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our finding at verification, we made certain changes to the margin calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Affirmative Determination of Critical Circumstances

For the final determination, we continue to find that critical circumstances exist with respect to imports of stainless steel flanges from Chandan, the Bebitz/Viraj single entity, the Echjay single entity, and companies covered by the ''all others'' rate. Thus, pursuant to section 735(a)(3) of the Act, and 19 CFR 351.206, we find that critical circumstances exist with respect to subject merchandise produced or exported by Chandan, the Bebitz/Viraj single entity, the Echjay single entity, and ''all others.'' For further discussion, see the *Issues and Decision Memorandum* at ''Critical Circumstances.''

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated ''all-others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. Because the final rate determined for the Echjay single entity and the Bebitz/Viraj single entity is based entirely on adverse facts available, we, therefore, based the ''all others'' rate on the rate calculated for Chandan. For a discussion of this methodology, *see* the Issues and Decision Memorandum.

Final Determination Margins

The final estimated weighted-average dumping margins are as follows:

Exporter or producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for offset(s)) (percent)
Chandan	19.16	14.29
Echjay single entity	145.25	140.38
Bebitz/Viraj single entity	145.25	145.25
All Others	19.16	14.29

Disclosure

We will disclose the calculations performed with respect to Chandan's weighted-average dumping margin to interested parties within five days of the public announcement of this final determination in accordance with 19 CFR 351.224(b). With respect to the Echjay single entity and the Bebitz/Viraj single entity, because Commerce relied on adverse facts available to determine

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Stainless Steel Flanges from India,'' dated concurrently with this determination and hereby adopted by this notice (Issues and Decision Memorandum or IDM).

[3] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[4] *See Initiation Notice*.

[5] The Echjay single entity is comprised of Echjay Forgings Pvt Limited, Echjay Industries Private Limited, Echjay Forging Industries Private Limited, and Spire Industries Pvt. Limited.

[6] The Bebitz/Viraj single entity is comprised of Bebitz Flanges Works Private Limited, Viraj Profiles Limited (Viraj), Flanschen werk Bebitz GmbH (FBG), Bebitz USA, Inc. (Bebitz USA), and Viraj USA, Inc. (Viraj USA).

the rate for these entities and selected the highest petition margin as the adverse facts available rate, there are no calculations to disclose.[7]

Continuation of Suspension of Liquidation

For entries made by Chandan, the Bebitz/Viraj single entity, the Echjay single entity, and companies covered by the ''all others'' rate, in accordance with section 735(c)(4)(B) of the Act, because we continue to find that critical circumstances exist, we will instruct CBP to continue to suspend liquidation of all appropriate entries of stainless steel flanges from India which were entered, or withdrawn from warehouse, for consumption on or after December 28, 2017, which is 90 days prior to the date of publication of the preliminary determination of this investigation in the **Federal Register**.

Commerce will instruct CBP to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. Any such adjusted cash deposit rate may be found in the ''Final Determination Margins'' section, above.

Additionally, pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), Commerce will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of 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 violation subject to sanction.

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Notification to Interested Parties

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act and 19 CFR 352.210(c).

Dated: August 10, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

Scope of the Investigation

The products covered by this investigation are certain forged stainless-steel flanges, whether unfinished, semi-finished, or finished (certain forged stainless-steel flanges). Certain forged stainless steel flanges are generally manufactured to, but not limited to, the material specification of ASTM/ASME A/SA182 or comparable domestic or foreign specifications. Certain forged stainless steel flanges are made in various grades such as, but not limited to, 304, 304L, 316, and 316L (or combinations thereof). The term ''stainless steel'' used in this scope refers to an alloy steel containing, by actual weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements.

Unfinished stainless-steel flanges possess the approximate shape of finished stainless steel flanges and have not yet been machined to final specification after the initial forging or like operations. These machining processes may include, but are not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing. Semi-finished stainless steel flanges are unfinished stainless-steel flanges that have undergone some machining processes.

The scope includes six general types of flanges. They are: (1) Weld neck, generally used in butt-weld line connection; (2) threaded, generally used for threaded line connections; (3) slip-on, generally used to slide over pipe; (4) lap joint, generally used with stub-ends/butt-weld line connections; (5) socket weld, generally used to fit pipe into a machine recession; and (6) blind, generally used to seal off a line. The sizes and descriptions of the flanges within the scope include all pressure classes of ASME B16.5 and range from one-half inch to twenty-four inches nominal pipe size. Specifically excluded from the scope of this investigation are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A351.

The country of origin for certain forged stainless-steel flanges, whether unfinished, semi finished, or finished is the country where the flange was forged. Subject merchandise includes stainless steel flanges as defined above that have been further processed in a third country. The processing includes, but is not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing, and/or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the stainless-steel flanges.

Merchandise subject to this investigation is typically imported under headings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings and ASTM specifications are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Final Determination of Critical Circumstances
V. Affiliation and Collapsing
VI. Changes Since the Preliminary Determination
VII. Use of Adverse Facts Available
VIII. Discussion of the Issues
Comment 1: Application of Total AFA for Bebitz/Viraj single entity
Comment 2: Collapsing of Echjay and its Affiliates, and Application of Total AFA to the Echjay Single Entity

[7] *See* Issues and Decision Memorandum at 7–8.

Comment 3: Product Characteristics used in the CONNUM Methodology
Comment 4: Application of Partial AFA for Packing Costs
Comment 5: Home Market Sales Viability
Comment 6: Credit Expenses
Comment 7: Clarification of the Scope of the Order
Comment 8: Import Duties
Comment 9: G&A Expense Ratio Calculation
Comment 10: Antidumping Duty Cash Deposit Rate offset by the Countervailing Duty Export Subsidy Rate
IX. Conclusion

[FR Doc. 2018–17688 Filed 8–15–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Rescission of the Antidumping Duty New Shipper Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 16, 2018, the United States Court of International Trade (CIT) issued a final judgment in *Huzhou Muyun Wood Co., Ltd., LLC.* v. *United States* ordering the Department of Commerce (Commerce) to proceed with Huzhou Muyun Wood Co., Ltd.'s (Muyun Wood) new shipper review of the antidumping duty order on multilayered wood flooring (wood flooring) from the People's Republic of China (China). Commerce is notifying the public that the final judgment in this case is not in harmony with the final rescission of the new shipper review.

DATES: Applicable beginning July 26, 2018.

FOR FURTHER INFORMATION CONTACT: Aleksandras Nakutis, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3147.

SUPPLEMENTARY INFORMATION:

Background

Muyun Wood is a Chinese producer/exporter of wood flooring. On June 13, 2015, Huzhou Muyun Wood Co., Ltd.'s (Muyun Wood) requested a new shipper review. On July 29, 2015, Commerce initiated the requested new shipper review covering the period of December 1, 2014, through May 31, 2015.[1]

On October 26, 2016, Commerce issued the *Final Rescission.*[2] In the *Final Rescission,* Commerce determined that Muyun's single sale was not *bona fide* and, accordingly, rescinded its new shipper review. Muyun Wood challenged Commerce's findings in the *Final Rescission* at the CIT.

On December 11, 2017, the CIT remanded for Commerce to determine whether Muyun Wood's sale during the review period was *bona fide.*[3] In accordance with the Court's decision, Commerce reconsidered its previous analysis and continued to determine that Muyun Wood's single sale was non-*bona fide.* Specifically, Commerce considered the following factors weighed against finding Muyun's sale *bona fide:* (1) The price reported by Muyun Wood was significantly higher than the highest comparison sales price for identical merchandise reported during a contemporaneous period; (2) the evidence indicating that Muyun Wood's unaffiliated and new customer did not resell the entirety of the merchandise at question for a profit; and (3) the singular nature of the sale.

On July 16, 2018, the CIT held that Commerce's ultimate conclusion that the sale was not *bona fide* was not supported by substantial evidence and that the rescission of the new shipper review cannot be upheld.[4] The CIT found that the totality of the circumstances do not support a finding that the sale was not *bona fide,* given that the sales quantity was typical, the expenses incurred were normal, the sale was made at arm's length, the payment timing was not atypical, and a substantial majority of the product was resold for a profit.[5] The CIT entered judgment, ordering Commerce to proceed with Muyun Wood's new shipper review.

Timken Notice

In its decision in *Timken,* as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with Commerce's determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's July 16, 2018 final judgment, ordering Commerce to proceed with Muyun Wood's new shipper review, constitutes a final decision of that court that is not in harmony with the *Final Rescission.*[6] This notice is published in fulfillment of the publication requirements of *Timken.*

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: August 9, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2018–17562 Filed 8–15–18; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Multilayered Wood Flooring from the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews; 2014–2015,* 80 FR 45192 (July 29, 2015).

[2] *See Multilayered Wood Flooring from the People's Republic of China: Rescission of Antidumping Duty New Shipper Reviews; 2015–2015,* 81 FR 74393 (October 26, 2016) (*Final Rescission*).

[3] *See Huzhou Muyun Wood Co. Ltd.* v. *United States,* 41 CIT __, 279 F. Supp. 3d 1215 (CIT 2017).

[4] *See Huzhou Muyun Wood Co., Ltd.* v. *United States,* 2018 WL 3455350 (CIT July 16, 2018).

[5] *Id.* at *8 (referring to the factors outlined at section 751(a)(2)(B)(iv) of the Act).

[6] *See MLWF Amended Final Determination,* 79 FR 21509 (May 2, 2014) (*MLWF Amended Final Determination*).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–878]

Stainless Steel Flanges From India: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of stainless steel flanges from India during the period of investigation January 1, 2016, through December 31, 2016.

DATES: Applicable August 16, 2018.

FOR FURTHER INFORMATION CONTACT: Ryan Mullen or Chelsey Simonovich, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–5260 or (202) 482–1979, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 23, 2018, Commerce published the *Preliminary*

Determination in the **Federal Register**.[1] A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the accompanying Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document, and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope Comments

In Commerce's Preliminary Scope Decision Memorandum, we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope) in scope case briefs or other written comments on scope issues.[3] No interested parties submitted timely scope comments. For a complete description of the scope of this investigation, see Appendix I.

Scope of the Investigation

The products covered by this investigation are stainless steel flanges from India. For a complete description of the scope of this investigation, *see* ''Scope of the Investigation,'' in Appendix I of this notice.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation, and the issues raised in the case and rebuttal briefs filed by the parties, are discussed in the Issues and Decision Memorandum. A list of the issues parties raised and to which we responded in the Issues and Decisions Memorandum, is attached to this notice at Appendix II.

Verification

Commerce conducted verification of the questionnaire responses submitted by the Government of India and Echjay Forgings Private Limited (Echjay) between June 4 and June 8, 2018.

Use of Adverse Facts Available

If necessary information is not available on the record, or an interested party withholds information, fails to provide requested information in a timely manner, significantly impedes a proceeding by not providing information, or information provided cannot be verified, the Department will apply facts available, pursuant to section 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act). For purposes of this final determination, Commerce relied, in part, on facts available and, because certain respondents did not cooperate by not acting to the best of their ability to respond to our requests for information, we drew an adverse inference, where appropriate, in selecting from among the facts otherwise available.[4] A full discussion of our decision to rely on adverse facts available is presented in the ''Use of Facts Otherwise Available and Adverse Inferences'' section of the Issues and Decision Memorandum.

Changes Since the Preliminary Determination

Based on our analysis of the comments received from parties and the minor corrections presented, as well as additional items discovered at verification, we made certain changes to the respondents' subsidy rate calculations set forth in the *Preliminary Determination.* For a discussion of these changes, *see* the Issues and Decision Memorandum and the Final Analysis Memorandum.[5]

Final Affirmative Determination of Critical Circumstances

For the *Preliminary Determination,* Commerce found that critical circumstances exist with respect to imports of stainless steel flanges from Bebitz Flanges Works (Bebitz), Echjay, and all-other exporters/producers covered by the ''all-others'' rate.[6] We did not modify our critical circumstances for the final determination. Thus, pursuant to section 703(e)(1) of the Act, we continue to find that critical circumstances exist with respect to subject merchandise produced or exported by Bebitz, Echjay, and ''all-others.''

Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a rate for each exporter/producer of the subject merchandise individually investigated, *i.e.,* Echjay and Bebitz. In accordance with section 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an ''all-others'' rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as mandatory respondents by those companies' exports of the subject merchandise to the United States. Under section 705(c)(5)(A)(i) of the Act, the ''all-others'' rate excludes zero and *de minimis* rates calculated for the exporters and producers individually investigated, as well as rates based entirely on facts otherwise available. Where the rates for the individually investigated companies are all zero or *de minimis,* or determined entirely using facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs Commerce to establish an ''all-others'' rate using ''any reasonable method.''

In this investigation, Commerce assigned a rate based entirely on facts available to Bebitz. Therefore, the only rate that is not zero, *de minimis* or based entirely on facts otherwise available is the rate calculated for Echjay. Consequently, the rate calculated for Echjay is also assigned as the rate for all-other producers and exporters.

The final subsidy rates are as follows:

Company	Subsidy rate (percent)
Bebitz Flanges Works Private Limited [7]	256.16
Echjay Forgings Private Limited [8]	4.92
All-Others	4.92

[1] *See* Stainless Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative and Alignment of Final Determination With Final Antidumping Duty Determination, 83 FR 3118 (January 23, 2018) and accompanying Preliminary Decision Memorandum (Preliminary Determination).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Stainless Steel Flanges from India,'' dated concurrently with this determination and hereby adopted by this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated November 15, 2017 (Preliminary Scope Decision Memorandum).

[4] *See* sections 776(a) and (b) of the Act.

[5] *See* Issues and Decision Memorandum; *see also* Memorandum, ''Final Analysis Memorandum for Echjay Forgings Pvt. Ltd,'' dated concurrently with this notice.

[6] See Preliminary Determination, 83 FR at 3118, 3119, and accompanying Preliminary Decision Memorandum at 4–7.

[7] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Bebitz Flanges Works: Viraj Profiles Limited.

[8] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Echjay Forgings Private Limited: Echjay Forging Industries Private Limited.

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).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of any entries of merchandise under consideration from India that were entered, or withdrawn from warehouse, for consumption on or after October 25, 2017, which is 90 days prior to the date of publication in the **Federal Register** of the *Preliminary Determination.* In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after May 22, 2018, but to continue the suspension of liquidation on all entries from January 23, 2018, through May 21, 2018.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order and will require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

U.S. International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Acting Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties such to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or, alternatively, conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

Notification to Interested Parties

This determination is published pursuant to section 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: August 10, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

Scope of the Investigation

The products covered by this investigation are certain forged stainless steel flanges, whether unfinished, semi-finished, or finished (certain forged stainless steel flanges). Certain forged stainless steel flanges are generally manufactured to, but not limited to, the material specification of ASTM/ASME A/SA182 or comparable domestic or foreign specifications. Certain forged stainless steel flanges are made in various grades such as, but not limited to, 304, 304L, 316, and 316L (or combinations thereof). The term ''stainless steel'' used in this scope refers to an alloy steel containing, by actual weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Unfinished stainless steel flanges possess the approximate shape of finished stainless steel flanges and have not yet been machined to final specification after the initial forging or like operations. These machining processes may include, but are not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing. Semi-finished stainless steel flanges are unfinished stainless steel flanges that have undergone some machining processes. The scope includes six general types of flanges. They are: (1) Weld neck, generally used in butt-weld line connection; (2) threaded, generally used for threaded line connections; (3) slip-on, generally used to slide over pipe; (4) lap joint, generally used with stub-ends/butt-weld line connections; (5) socket weld, generally used to fit pipe into a machine recession; and (6) blind, generally used to seal off a line. The sizes and descriptions of the flanges within the scope include all pressure classes of ASME B16.5 and range from one-half inch to twenty-four inches nominal pipe size. Specifically excluded from the scope of this investigation are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A351.

The country of origin for certain forged stainless steel flanges, whether unfinished, semi-finished, or finished is the country where the flange was forged. Subject merchandise includes stainless steel flanges as defined above that have been further processed in a third country. The processing includes, but is not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing, and/or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the stainless steel flanges.

Merchandise subject to the investigation is typically imported under headings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTS). While HTS subheadings and ASTM specifications are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Final Decision Memo

[FR Doc. 2018–17696 Filed 8–15–18; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products From India: Notice of Partial Rescission of Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable August 16, 2018.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or Joy Zhang 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) 482–3797 or (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2006, the Department of Commerce (Commerce) published in the **Federal Register** the antidumping duty order on certain lined paper products from India.[1] On September 1, 2017, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on certain lined paper products from India.[2] On November 13, 2017, pursuant to timely requests from interested parties, Commerce published in the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to the following companies for the period of review September 1, 2016, through August 31, 2017: Goldenpalm Manufacturers PVT Limited (Goldenpalm), Kokuyo Riddhi Paper Products Pvt. Ltd. (Kokuyo), Lodha Offset Limited (Lodha), Lotus Global Private Limited (Lotus Global), Magic International Pvt. Ltd. (Magic International), Marisa International, Navneet Education Ltd. (Navneet), Pioneer Stationery Pvt. Ltd. (Pioneer), PP Bafna Ventures Private Limited (PP Bafna), SAB International, SGM Paper Products, and Super Impex.[3] On December 18, 2017, Goldenpalm timely withdrew its request for review.[4] On January 25 and 26, 2018, the Association of American School Paper Suppliers and its individual members (AASPS or the petitioners) timely withdrew their request for review of SAB International and Super Impex, respectively.[5] On January 29, 2018, SAB International and Super Impex also timely withdrew their respective requests for review.[6] On February 5, and February 9, 2018, Lotus Global and PP Bafna timely withdrew their respective requests for review.[7] No other party requested an administrative review of these particular companies.

Partial Rescission of the 2016–2017 Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. All of the aforementioned withdrawal requests were timely submitted and no other interested party requested an administrative review of these particular companies. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with our practice,[8] we are rescinding this review of the antidumping duty order on certain lined paper products from India, in part, with respect to Goldenpalm, Super Impex, SAB International, Lotus Global, and PP Bafna. The administrative review will continue with respect to Kokuyo, Lodha, Magic International, Marisa International, Navneet, Pioneer, and SGM Paper Products.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, Goldenpalm, Super Impex, SAB International, Lotus Global, and PP Bafna, antidumping duties shall be assessed on their entries of subject merchandise at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period September 1, 2016, through August 31, 2017, in accordance with 19 CFR 351.212(c)(1)(i).

Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a 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 Commerce' presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under an 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.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 10, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2018–17692 Filed 8–15–18; 8:45 am]

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[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 82 FR 41595 (September 1, 2017).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 52268 (November 13, 2017) (*Initiation Notice*).

[4] *See* Goldenpalm's letter titled, ''Lined Paper Products from India; A–533–843; Withdrawal of Request for Review by Goldenpalm Manufacturers PVT Limited,'' dated December 18, 2017.

[5] *See* the petitioners' letter titled, ''Certain Lined Paper Products from India: Withdrawal of Request for Administrative Review of SAB International,'' dated January 25, 2018. *See also* the petitioners' letter titled, ''Certain Lined Paper Products from India: Withdrawal of Request for Administrative Review of Super Impex,'' dated January 26, 2018.

[6] *See* SAB International's letter titled, ''Certain Lined Paper Products from India: Withdrawal of Request for Administrative Review of Anti-Dumping Duty of SAB International,'' dated January 29, 2018. *See also* Super Impex's letter titled, ''Certain Lined Paper Products from India: Withdrawal of Request for Administrative Review of Anti-Dumping Duty of Super Impex,'' dated January 29, 2018.

[7] *See* Letter from Lotus Global Private Limited to Commerce, ''Certain Lined Paper Products from India: Withdrawal of Request for Administrative Review of Antidumping Duty of Lotus Global Private Limited,'' dated February 5, 2018. *See also* Letter from PP Bafna to Commerce, ''Certain Lined Paper Products from India: Withdrawal of Request for Administrative Review of Antidumping Duty of PP Bafna Ventures Private Limited,'' dated February 9, 2018.

[8] *See, e.g., Certain Lined Paper Products from India: Notice of Partial Rescission of Antidumping Duty Administrative Review and Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 21781, 21783 (May 11, 2009); *see also Carbon Steel Butt-Weld Pipe Fittings from Thailand: Rescission of Antidumping Duty Administrative Review,* 74 FR 7218, 7218 (February 13, 2009).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–895, A–583–861]

Low Melt Polyester Staple Fiber From the Republic of Korea and Taiwan: Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing antidumping duty (AD) orders on low melt polyester staple fiber (low melt PSF) from the Republic of Korea (Korea) and Taiwan.

DATES: Applicable August 16, 2018.

FOR FURTHER INFORMATION CONTACT: Alice Maldonado at (202) 482–4682 or Brittany Bauer at (202) 482–3860 (Korea); Rebecca Janz at (202) 482–2972 or Ajay Menon at (202) 482–1993 (Taiwan); AD/CVD Operations, Office II, 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 June 22, 2018, Commerce published its affirmative final determinations in the less-than-fair-value (LTFV) investigations of low melt PSF from Korea and Taiwan.[1] On August 6, 2018, the ITC notified Commerce of its affirmative determinations 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 low melt PSF from Korea and Taiwan, and its determination that critical circumstances do not exist with respect to imports of low melt PSF from Korea subject to Commerce's affirmative critical circumstances determination.[2]

Scope of the Orders

The merchandise subject to these orders is synthetic staple fibers, not carded or combed, specifically bi-component polyester fibers having a polyester fiber component that melts at a lower temperature than the other polyester fiber component (low melt PSF). The scope includes bi-component polyester staple fibers of any denier or cut length. The subject merchandise may be coated, usually with a finish or dye, or not coated.

Low melt PSF is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 5503.20.0015. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

Antidumping Duty Orders

As stated above, on August 6, 2018, in accordance with sections 735(b)(1)(A)(i) and 735(d) of the Act, the ITC notified Commerce of its final determinations in these investigations, in which it found that an industry in the United States is materially injured by reason of imports of low melt PSF from Korea and Taiwan.[3] The ITC also notified Commerce of its determination that critical circumstances do not exist with respect to imports of low melt PSF from Korea subject to Commerce's critical circumstances finding.[4] Therefore, in accordance with section 735(c)(2) of the Act, we are issuing these AD orders. Because the ITC determined that imports of low melt PSF from Korea and Taiwan are materially injuring a U.S. industry, unliquidated entries of such merchandise from Korea and Taiwan, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

As a result of the ITC's final determination, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of low melt PSF from Korea and Taiwan. Antidumping duties will be assessed on unliquidated entries of low melt PSF from Korea and Taiwan entered, or withdrawn from warehouse, for consumption on or after February 2, 2018, the date of publication of the preliminary determinations,[5] but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination as further described below.

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 low melt PSF from Korea and Taiwan. Because the estimated weighted-average dumping margin for Huvis Corporation (Huvis) in the *Korea Final Determination* was zero, entries of shipments of subject merchandise both produced and exported by Huvis are not subject to suspension of liquidation or cash deposit requirements. Entries of subject merchandise exported to the United States by any other producer and exporter combination are not entitled to this exclusion from suspension of liquidation and are subject to the applicable cash deposit rates noted below. These instructions suspending liquidation will remain in effect until further notice.

We will also instruct CBP to require cash deposits equal to the amounts as indicated below. Accordingly, effective on the date of publication 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 relevant all-others rates apply to all producers or exporters not specifically listed, as appropriate.

Provisional Measures

Section 733(d) of the Act states that the suspension of liquidation 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 Commerce to extend that four-month period to no more than six months. At the request of

[1] *See Low Melt Polyester Staple Fiber from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part,* 83 FR 29094 (June 22, 2018) (*Korea Final Determination*); and *Low Melt Polyester Staple Fiber from Taiwan: Final Determination of Sales at Less Than Fair Value,* 83 FR 29099 (June 22, 2018).

[2] *See* Letter from the ITC to the Hon. Gary Taverman, dated August 6, 2018. *See also Low Melt Polyester Staple Fiber from Korea and Taiwan,* 83 FR 39461 (August 9, 2018).

[3] *Id.*

[4] *Id.*

[5] *See Low Melt Polyester Staple Fiber from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures,* 83 FR 4906 (February 2, 2018) (*Korea Preliminary Determination*); and *Low Melt Polyester Staple Fiber from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 83 FR 4903 (February 2, 2018) (*Taiwan Preliminary Determination*).

[6] *See* section 736(a)(3) of the Act.

exporters that account for a significant proportion of low melt PSF from Korea and Taiwan, we extended the four-month period to six months in both cases.[7] Commerce's preliminary determinations were published on February 2, 2018. Therefore, the extended period, beginning on the date of publication of the preliminary determinations, ended on August 1, 2018. Pursuant to section 737(b) of the Act, the collection of cash deposits at the rates listed below will begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of low melt PSF from Korea and Taiwan entered, or withdrawn from warehouse, for consumption after August 1, 2018, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Critical Circumstances

With regard to the ITC's negative critical circumstances determination regarding imports of low melt PSF from Korea, Commerce will instruct CBP to lift suspension and refund any cash deposits made to secure payment of estimated antidumping duties on subject merchandise entered, or withdrawn from warehouse, for consumption on or after November 4, 2017 (*i.e.,* 90 days prior to the date of publication of the preliminary determinations), but before February 2, 2018 (*i.e.,* the date of publication of the preliminary determinations).

Estimated Weighted-Average Dumping Margins

The estimated weighted-average AD margins are as follows:

Exporter/producer	Dumping margins (percent)
Korea: Huvis Corporation	0.00
Toray Chemical Korea Inc	16.27
All Others	16.27
Taiwan: Far Eastern New Century Corporation	49.93
All Others	49.93

[7] *See Korea Preliminary Determination* and *Taiwan Preliminary Determination.*

Notification to Interested Parties

This notice constitutes the AD orders with respect to low melt PSF from Korea and Taiwan pursuant to section 736(a) of the Act. Interested parties can find a list of AD orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html*.

These orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: August 9, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2018–17691 Filed 8–15–18; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG399

Northwest Atlantic Fisheries Organization Consultative Committee Meeting

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a public meeting of the Northwest Atlantic Fisheries Organization Consultative Committee. This meeting will help to ensure that the interests of U.S. stakeholders in the fisheries of the Northwest Atlantic Ocean are adequately represented at the Annual Meeting of the Organization. Northwest Atlantic Fisheries Organization Consultative Committee members and all other interested U.S. stakeholders are invited to attend.

DATES: The meeting will be held August 27, 2018, from 1:30 p.m. to 3:30 p.m. EST.

ADDRESSES: The meeting will be held at National Marine Fisheries Service's Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Please notify Shannah Jaburek (see **FOR FURTHER INFORMATION CONTACT**) by August 22, 2018, if you plan to attend the meeting in person or remotely. The meeting will be accessible by webinar—instructions will be emailed to meeting participants who provide notice.

FOR FURTHER INFORMATION CONTACT: Elizabethann Mencher by email at *Elizabethann.Mencher@noaa.gov,* or by phone at 301–427–8362; or Shannah Jaburek by email at *Shannah.Jaburek@noaa.gov,* or by phone at 978–282–8456.

SUPPLEMENTARY INFORMATION: The Northwest Atlantic Fisheries Organization (NAFO) is a regional fisheries management organization that coordinates scientific study and cooperative management of the fisheries resources of the Northwest Atlantic Ocean, excluding salmon, tunas/marlins, whales and sedentary species (*e.g.,* shellfish). NAFO was established in 1979 by the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries. The United States acceded to the Convention in 1995, and has participated actively in NAFO since that time. In 2005, NAFO launched a reform effort to amend the Convention in order bring the Organization more in line with the principles of modern fisheries management. As a result of these efforts, the Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries entered into force in May 2017.

NAFO currently has 12 Contracting Parties, including Canada, Cuba, Denmark (in respect of Faroe Islands and Greenland), European Union, France (in respect of St. Pierre and Miquelon), Iceland, Japan, Norway, Republic of Korea, Russian Federation, Ukraine and the United States.

Membership in the NCC is open to representatives from the New England and Mid-Atlantic Fishery Management Councils, the States represented on those Councils, the Atlantic States Marine Fisheries Commission, the fishing industry, the seafood processing industry, and others knowledgeable and experienced in the conservation and management of fisheries in the Northwest Atlantic Ocean. Members shall be appointed to a 2-year term and are eligible for reappointment. The NCC is exempted from the Federal Advisory Committee Act. NCC members are invited to attend all non-executive meetings of the U.S. Commissioners and at such meetings are given an opportunity to examine and to be heard on all proposed programs of study and investigation, reports, recommendations, and regulations of issues relating to the Act and proceedings of NAFO. In addition, NCC members may attend all public meetings of the NAFO Commission and any other meetings to which they are invited.

If you are interested in becoming a member of the NCC, please contact Elizabethann Mencher (see **FOR FURTHER**

INFORMATION CONTACT) for additional details.

The NAFO Annual Meeting will be held September 17–21, 2018, in Tallinn, Estonia. Additional information about the meeting can be found at: *https://www.nafo.int/Meetings/AM.*

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannah Jaburek (see **FOR FURTHER INFORMATION CONTACT**) by August 22, 2018.

Dated: August 13, 2018.

John Henderschedt,

Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2018–17684 Filed 8–15–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG419

Meeting of the Marine Fisheries Advisory Committee

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

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the proposed schedule and agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee (MAFAC). The members will discuss and approve work plans for their Commerce and Recreational Fisheries Subcommittees.

DATES: The meeting will be September 6, 2018, 1–3 p.m., Eastern Time.

ADDRESSES: There is no public access. Meeting is by conference call.

FOR FURTHER INFORMATION CONTACT: Heidi Lovett; NOAA Fisheries Office of Policy; (301) 427–8034; email: *Heidi.Lovett@noaa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given of a meeting of MAFAC. The MAFAC was established by the Secretary of Commerce (Secretary), and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The MAFAC charter and summaries of prior MAFAC meetings are located online at *https://www.fisheries.noaa.gov/topic/partners#marine-fisheries-advisory-committee-.*

Matters To Be Considered

The Committee is convening to discuss and approve topics and work plans for their Commerce and Recreational Fisheries Subcommittees for the coming year. Other administrative matters may be considered. This date, time, and agenda are subject to change.

Time and Date

The meeting is scheduled for September 6, 2018, 1–3 p.m., Eastern Time by conference call and webinar. Access information for the public will be posted at *https://www.fisheries.noaa.gov/national/partners/marine-fisheries-advisory-committee-meeting-materials-and-summaries* by August 30, 2018.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to Heidi Lovett, (301) 427–8034 by August 24, 2018.

Dated: August 13, 2018.

Jennifer L. Lukens,

Federal Program Officer, Marine Fisheries Advisory Committee, National Marine Fisheries Service.

[FR Doc. 2018–17685 Filed 8–15–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management will hold a public meeting to solicit comments on the performance evaluation of the South Carolina Coastal Management Program.

DATES: *South Carolina Coastal Management Program Evaluation:* The public meeting will be held on September 11, 2018, and written comments must be received on or before September 21, 2018.

For specific dates, times, and locations of the public meetings, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit comments on the program or reserve NOAA intends to evaluate by any of the following methods:

Public Meeting and Oral Comments: A public meeting will be held in North Charleston, South Carolina. For the specific location, see **SUPPLEMENTARY INFORMATION.**

Written Comments: Please direct written comments to Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, or email comments *Carrie.Hall@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, by phone at (240) 533–0730 or email comments *Carrie.Hall@noaa.gov.* Copies of the previous evaluation findings and 2016–2020 Assessment and Strategy may be viewed and downloaded on the internet at *http://coast.noaa.gov/czm/evaluations.* A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved state and territorial coastal programs. The process includes one or more public meetings, consideration of written public comments, and consultations with interested Federal, state, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the state has met the national objectives, adhered to the management program approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is completed, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

You may participate or submit oral comments at the public meeting scheduled as follows:

Date: September 11, 2018.

Time: 5:30 p.m., local time.

Location: North Charleston City Hall, City Council Chambers, 2500 City Hall Lane, North Charleston, South Carolina.

Written public comments must be received on or before September 21, 2018.

Dated: July 31, 2018.

John King,

Chief, Business Operations Division, Office for Coastal Management.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

[FR Doc. 2018–17612 Filed 8–15–18; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of a permit amendment and a permit modification.

SUMMARY: Notice is hereby given that permits or permit amendments have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone: (301) 427–8401; fax: (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit or permit amendment had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the research, go to *www.federalregister.gov* and search on the permit number provided in the table below.

Permit No.	RIN	Applicant	Previous **Federal Register** notice	Permit amendment issuance date
17273–02	0648–XC703	Greater Atlantic Regional Fisheries Office (Responsible Party: Julie Crocker).	78 FR 50395; August 19, 2013	July 10, 2018.
17557–01	0648–XD825	NMFS Marine Forensics Lab (Responsible Party: M. Katherine Moore).	80 FR 39411; July 9, 2015	July 10, 2018.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: August 13, 2018.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–17694 Filed 8–15–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG344

Marine Mammals; File No. 21938

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the NMFS Southeast Fisheries Science Center (SEFSC), 75 Virginia Beach Drive, Miami, FL 33149 (Responsible Party: Theophilus Brainerd, Ph.D.), has applied in due form for a permit to conduct research on up to 33 species of cetaceans.

DATES: Written, telefaxed, or email comments must be received on or before September 17, 2018.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 21938 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone: (301) 427–8401; fax: (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. 21938 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The SEFSC is requesting a five-year permit to conduct cetacean research in U.S. and international waters of the western North Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. The objectives of the research are to meet the mandates of the MMPA and ESA through the study of cetaceans: (1) Stock structure, size estimates, habitat, and geographic range; (2) movement, ranging patterns, and diving behavior; (3) vocalization patterns and the ambient acoustic environment; (4) reproductive status; (5) types and origin of prey; (6) levels of anthropogenic chemical contaminants, and (7) behaviors to certain anthropogenic activities. Up to 33 species of cetaceans may be taken during research including the following ESA-listed species: Blue (*Balaenoptera musculus*), fin (*B. physalus*), Gulf of Mexico Bryde's (*B. edeni*), North Atlantic right (*Eubalaena glacialis*), sei (*B. borealis*), and sperm (*Physeter microcephalus*) whales. Cetaceans may be taken during vessel and aerial surveys, including unmanned aircraft systems for photo-identification, photogrammetry, above and underwater photography and videography, behavioral observations, passive acoustic recordings, biological sampling (exhaled air, feces, sloughed skin, and skin and blubber biopsies), and tagging (suction-cup, dart/barb, and fully-implantable tags). Annual take numbers by species and procedure can be found in the take table of the application.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 13, 2018.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–17695 Filed 8–15–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Acquisition University Board of Visitors; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Acquisitions and Sustainment, Department of Defense.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following federal advisory committee meeting of the Defense Acquisition University Board of Visitors will take place.

DATES: Open to the public Wednesday, September 12, 2018 from 9:00 a.m. to 4:00 p.m.

ADDRESSES: Defense Acquisition University Packard Conference Center; 9820 Belvoir Road, Fort Belvoir, VA 22060.

FOR FURTHER INFORMATION CONTACT: Christen Goulding, (703) 805–5412 (Voice), (703) 805–5909 (Facsimile), *christen.goulding@dau.mil* (Email). Mailing address is Protocol Director, DAU, 9820 Belvoir Rd., Fort Belvoir, VA 22060. Website: *https://www.dau.mil/about/p/Board-of-Visitors.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The board will discuss items of on-going interest to the Under Secretary of Defense for Acquisition and Sustainment with regard to the training and development of the Defense Acquisition Workforce.

Agenda: 9:00 a.m.–10:00 a.m. Executive Session; 10:00 a.m.–11:30 a.m. DAU Update; 11:30 a.m.–1:00 p.m. Lunch; 1:00 p.m.–2:30 p.m. Future Focus; 2:30 p.m.–4:00 p.m. Board Remarks and Recommendations.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. However, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Caren Hergenroeder at 703–805–5134.

Written Statements: Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Defense Acquisition University Board of Visitors about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Defense Acquisition University Board of Visitors. All written statements shall be submitted to the Designated Federal Officer for the Defense Acquisition University Board of Visitors, and this individual will ensure that the written statements are provided to the membership for their consideration. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Defense Acquisition University Board of Visitors until its next meeting.

Committee's Designated Federal Officer or Point of Contact: Ms. Christen Goulding, 703–805–5412, *christen.goulding@dau.mil.*

Dated: August 13, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–17693 Filed 8–15–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces; Notice of Federal Advisory Committee Meeting; Correction

AGENCY: General Counsel of the Department of Defense (DoD), Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting; correction.

SUMMARY: On Friday, August 10, 2018, the Department of Defense published a notice titled ''Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces; Notice of Federal Advisory Committee Meeting.'' In that notice, the waiver language in the first paragraph of the **SUPPLEMENTARY INFORMATION** section contains incorrect references to the Defense Business Board and an incorrect meeting date. This notice corrects those errors. All other information in the notice of August 10, 2018 remains the same.

DATES: This correction is effective on August 16, 2018.

FOR FURTHER INFORMATION CONTACT: Patricia Toppings, 571–372–0485.

SUPPLEMENTARY INFORMATION: On Friday, August 10, 2018 (83 FR 39730–39731), DoD published a notice titled ''Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces; Notice of Federal Advisory Committee Meeting'' that contained incorrect references to the Defense Business Board and an incorrect meeting date in the first paragraph of the **SUPPLEMENTARY INFORMATION** section. The corrected waiver language is included in its entirety in the next paragraph.

Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its meeting on August 23, 2018. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Dated: August 13, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–17660 Filed 8–15–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Services; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following federal advisory committee meeting of the Defense Advisory Committee on Women in the Services (DACOWITS) will take place.

DATES: Day 1—Open to the public Tuesday, September 11, 2018 from 8:00 a.m. to 3:00 p.m. Day 2—Open to the public Wednesday, September 12, 2018 from 8:00 a.m. to 3:00 p.m.

ADDRESSES: The address of the open meeting is the Association of the United States Army Conference Center, 2425 Wilson Boulevard, Arlington, VA 22201.

FOR FURTHER INFORMATION CONTACT: Colonel Toya J. Davis, U.S. Army, (703) 697–2122 (Voice), 703–614–6233 (Facsimile), *toya.j.davis.mil@mail.mil* (Email). Mailing address is 4800 Mark Center Drive, Suite 04J25–01, Alexandria, VA 22350. Website: *http://dacowits.defense.gov*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is for the DACOWITS to receive briefings and updates relating to their current work. The meeting will open with the Designated Federal Officer (DFO) giving a status update on the DACOWITS' requests for information. Day one will comprise five separate briefings from the DoD and Military Services on the following topics: Military Recruiting Strategies, Military Marketing Strategies, DoD Recruitable Population Demographics, Status of the United States Navy's Submarine Integration Efforts, and an update from the United States Marine Corps on the gender integration of Recruit Training. The second day of the meeting will open with a briefing from Military Services regarding their new Parental Leave Policies. This will be followed by a briefing from the National Guard Bureau on their Pregnancy and Parenthood Policies. Lastly the DACOWITS will propose and vote on their annual recommendations to the Secretary of Defense.

Agenda: Tuesday, September 11, 2018, from 8:00 a.m. to 3:00 p.m.—Welcome, Introductions, and Announcements; Request for Information Status Update; Briefings and DACOWITS discussion on: Military Recruiting Strategies, Military Marketing Strategies, DoD Recruitable Population Demographics, Submarine Integration Efforts, and the integration of Marine Corps' Recruit Training. Wednesday, September 12, 2018, from 8:00 a.m. to 3:00 p.m.—Welcome and Announcements; Briefing and DACOWITS discussion on the Military Services' Parental Leave Policies and the National Guard Bureau's Pregnancy and Parenthood Policies; and the annual voting session.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public, subject to the availability of space.

Written Statements: Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the FACA, interested persons may submit a written statement to the DACOWITS. Individuals submitting a written statement must submit their statement no later than 5:00 p.m., Tuesday, September 4, 2018 to Mr. Robert Bowling (703) 697–2122 (Voice), 703–614–6233 (Facsimile), *osd.pentagon.ousd-p-r.mbx.dacowits@mail.mil* (Email). Mailing address is 4800 Mark Center Drive, Suite 04J25–01, Alexandria, VA 22350. If a written statement is not received by Tuesday, September 4, 2018, prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DACOWITS until its next open meeting. The DFO will review all timely submissions with the DACOWITS Chair and ensure they are provided to the members of the Committee.

Dated: August 13, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–17700 Filed 8–15–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of the Arlington National Cemetery Southern Expansion Project and Associated Roadway Realignment Draft Environmental Assessment, Arlington, VA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability and public meeting.

SUMMARY: The U.S. Army Corps of Engineers (USACE) Norfolk District, on behalf of the Arlington National Cemetery (ANC), announces the availability of a Draft Environmental Assessment (Draft EA) for the Arlington National Cemetery Southern Expansion Project and Associated Roadway Realignment project, for review and comment. The Draft EA evaluates the proposal to increase the cemetery's contiguous acreage, realign roadways, and maximize burial space by utilizing an area adjacent to the existing cemetery that includes the former Navy Annex site, located south of the existing cemetery, in Arlington, Virginia. The cemetery has been working with the owners and operators of the adjacent road network, Arlington County and the Virginia Department of Transportation, and the Federal Highway Administration, on a roadway realignment that supports the short- and

long-term multimodal transportation system for the Commonwealth of Virginia and Arlington County.

DATES: The Draft EA is available for a 30-day review period. Written comments will be accepted until the close of business on September 22, 2018.

ADDRESSES: The public is invited to submit comments to Ms. Kathy Perdue, Department of the Army, U.S. Army Corps of Engineers, Norfolk District, Planning and Policy Branch, 803 Front St., Norfolk, VA 23510 or via email: *SouthernExpansion@usace.army.mil.* The Project title and the commenter's contact information should be included with submitted comments.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Perdue, (757) 201–7218.

SUPPLEMENTARY INFORMATION: As part of the public involvement process, notice is hereby given by the USACE Norfolk District, on behalf of the ANC, of a public information meeting that will be held on August 22, 2018, from 5:00 to 8:00 p.m., at the Sheraton Pentagon City Hotel, 900 S Orme Street, Arlington, VA 22204. The public information meeting will allow participants the opportunity to comment and ask questions on the Draft EA. Attendance at the public meeting is not necessary to provide comments. Written comments may also be given to the contact listed under **ADDRESSES**.

The document is available for review at the following locations:

(1) The USACE Norfolk District Arlington National Cemetery Southern Expansion website: *http://www.nao.usace.army.mil/Missions/Military-Construction/ANCSouthernExpansion/*

(2) The ANC website: *https://www.arlingtoncemetery.mil/About/Policies-and-Public-Notices/Public-Notices*

(3) Copies at the following Arlington County, Virginia Public Libraries:

a. Arlington County Central Library, 1015 N Quincy Street, Arlington, VA 22201.

b. Aurora Hills Branch Public Library, 735 South 18th Street, Arlington, VA 22202.

c. Columbia Pike Branch Public Library, 816 South Walter Reed Drive, Arlington, VA 22204.

The ANC is the lead federal agency for this Project, and the USACE has prepared the draft NEPA document on its behalf, assisted by the HNTB Corporation. The following are serving as cooperating agencies during the NEPA process: Federal Highway Administration (FHWA), the Environmental Protection Agency (EPA), the National Capital Planning Commission (NCPC), the Virginia Department of Transportation (VDOT), and Arlington County. The ANC and the USACE also considered the input of various stakeholder organizations and the public.

ANC is located within the eastern boundary of Arlington County, in the northeastern corner of the Commonwealth of Virginia, and at the western terminus of Memorial Avenue, directly across the Arlington Memorial Bridge and the Potomac River from the District of Columbia (Washington, DC). ANC is our nation's most hallowed ground. This Army cemetery consists of 624 acres and is the final resting place of over 400,000 service members and their families. The proposed Southern Expansion site, bounded by Washington Boulevard (Route 27), I–395, the VDOT Maintenance Complex, the Foxcroft Heights neighborhood, and the ANC, involves approximately 70 acres among three landowners: ANC, Arlington County, and VDOT.

Proposed Action. The Proposed Action is to establish a single contiguous parcel of land south of the cemetery by closing and relocating local roadways and developing the parcel to increase interment capacity and increase multimodal transportation capacity on Columbia Pike. The contiguous parcel would be created through the replacement of Southgate Road with a new South Nash Street, and realignment of Columbia Pike and the Columbia Pike/Washington Boulevard interchange (adjacent to the Pentagon). The existing Air Force Memorial (AFM) would be incorporated into the cemetery expansion, and the existing Operations Complex would be relocated south of Columbia Pike.

Alternatives. The Draft EA considers a full range of alternatives that meet the Proposed Action's purpose and need, while avoiding and minimizing impacts to the maximum extent practicable. Alternatives were developed that leverage to varying degrees the Army-owned land south of Columbia Pike to increase contiguous space for burials and cemetery operational effectiveness. Alternatives considered in detail included: (1) Relocate Operations Complex Alternative (Preferred Alternative/Proposed Action); (2) Maintain Operations Complex with Tunnel Alternative; and (3) Maintain Operations Complex without Tunnel Alternative.

Public Involvement. A Notice of Intent to prepare an EA was published in the **Federal Register** (81 FR 23281) on April 20, 2016. A public NEPA scoping meeting was held on April 27, 2016, in Arlington County.

Pursuant to the requirements of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321–4370, as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the ANC, as the lead federal agency, has determined that the project does not have the potential to cause significant impacts on the human environment, and has developed the Draft EA to examine and assess the impacts of the Proposed Action.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–17573 Filed 8–15–18; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Extension of Comment Period, Draft Waste Incidental To Reprocessing Evaluation for Closure of Waste Management Area C at the Hanford Site, Washington

AGENCY: U.S. Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: On June 4, 2018, the U.S. Department of Energy (''DOE'') published in the **Federal Register** a Notice of Availability of the *Draft Waste Incidental to Reprocessing Evaluation for Closure of Waste Management Area C at the Hanford Site, Washington* (Draft WIR Evaluation), which evaluates whether the stabilized tanks and ancillary structures in WMA C, as well as the residual material in these tanks and structures will meet the criteria in Section II.B.(2)(a) of DOE M. 435.1–1, *Radioactive Waste Management Manual* at closure. The original public comment period was from June 4, 2018 through September 7, 2018. This notice announces an extension of the public comment period on the Draft WIR Evaluation through November 7, 2018; any comments received after that date will be considered to the extent practical.

DATES: The comment period in the Notice of Availability, published on June 4, 2018 (83 FR 25657), is extended through November 7, 2018. Any comments received after that date will be considered to the extent practical.

ADDRESSES: Interested persons may submit comments by email to *WMACDRAFTWIR@rl.gov.* Alternately, written comments may also be sent by mail to: Mr. Jan Bovier, U.S. Department of Energy, Office of River Protection, P.O. Box 450, MSIN H6–60, Richland, WA 99354.

The Draft WIR Evaluation is available on the internet at: *https://www.hanford.gov/page.cfm/WasteManagementAreaC* and is also publicly available for review at the following locations: U.S. DOE Public Reading Room, 1000 Independence Avenue SW, Washington, DC 20585, phone: (202) 586–5955, or fax: (202) 586–0575; and U.S. DOE Public Reading Room located at 2770 University Drive, Consolidated Information Center (CIC), Room 101L, Richland, WA 99354, phone: (509) 372–7303.

FOR FURTHER INFORMATION CONTACT: Mr. Jan Bovier by email at *Jan_B_Bovier@orp.doe.gov,* by mail at U.S. Department of Energy, Office of River Protection, P.O. Box 450, MSIN H6–60, Richland, WA 99354, or by phone at (509) 376–9630.

SUPPLEMENTARY INFORMATION: On June 4, 2018, DOE published in the **Federal Register** a notice of availability of the Draft WIR Evaluation for comment by States, Tribal Nations, and the public (83 FR 25657). The original public comment period was from June 4, 2018 through September 7, 2018.

In response to several requests, DOE is extending the public comment period by 60 days, through November 7, 2018. DOE will consider comments received after that date to the extent practical.

DOE will consider comments from States, Tribal Nations and the public, as well as NRC consultative recommendations, prior to finalizing DOE's analyses and prior to issuing a final WIR Evaluation. Based on the final WIR Evaluation, DOE may determine (in a WIR determination) whether the stabilized tanks, residuals and ancillary structures in WMA C at closure meet the criteria in Section II.B.(2)(a) of DOE M. 435.1–1, *Radioactive Waste Management Manual,* are not high-level radioactive waste, and are to be managed as low-level radioactive waste.

Signed in Washington, DC, on August 10, 2018.

Anne Marie White,

Assistant Secretary for Environmental Management.

[FR Doc. 2018–17687 Filed 8–15–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC18–18–000]

Commission Information Collection Activities (FERC–545 and FERC–549c); Consolidated Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collections and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the requirements and burden of the information collections described below.

DATES: Comments on the collections of information are due October 15, 2018.

ADDRESSES: You may submit comments (identified by Docket No. IC18–18–000) by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Please reference the specific collection number and/or title in your comments.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Type of Request: Three-year extension of the information collection requirements for all collections described below with no changes to the current reporting requirements. Please note the two collections are distinct.

Comments: Comments are invited on: (1) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal)

Title: FERC–545, Gas Pipeline Rates: Rate Change (Non-formal).

OMB Control No.: 1902–0154.

Type of Request: Three-year extension of the FERC–545 information collection requirements with no changes to the current reporting requirements.

Abstract: FERC–545 is required to implement sections 4, 5, and 16 of the Natural Gas Act (NGA), (15 U.S.C. 717c–717o, PL 75 688, 52 Stat. 822 and 830). NGA sections 4, 5, and 16 authorize the Commission to inquire into rate structures and methodologies and to set rates at a just and reasonable level. Specifically, a natural gas company must obtain Commission authorization for all rates and charges made, demanded, or received in connection with the transportation or sale of natural gas in interstate commerce.

Under the NGA, a natural gas company's rates must be just and reasonable and not unduly discriminatory or preferential. The Commission may act under different sections of the NGA to effect a change in a natural gas company's rates. When the Commission reviews rate increases that a natural gas company has proposed, it is subject to the requirement of section 4(e) of the NGA. Under section 4(e), the natural gas company bears the burden of proving that its proposed rates are just and reasonable. On the other hand, when the Commission seeks to impose its own rate determination, it must do so in compliance with section 5(a) of the NGA. Under section 5, the Commission must first establish that its alternative rate proposal is both just and reasonable.

Section 16 of the NGA states that the Commission ''shall have the power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out provisions of [the NGA].'' In other words, section 16 of the NGA grants the Commission the power to define accounting, technical and trade terms, prescribe forms, statements, declarations or reports, and to prescribe rules and regulations.

Pipelines adjust their tariffs to meet market and customer needs. The Commission's review of these proposed changes is required to ensure rates remain just and reasonable and that services are not provided in an unduly or preferential manner. The Commission's regulations in 18 CFR part 154 specify what changes are allowed and the procedures for requesting Commission approval.

The Commission uses information in FERC–545 to examine rates, services, and tariff provisions related to natural gas transportation and storage services. The following filing categories are subject to FERC–545: (1) Tariff Filings—filings regarding proposed changes to a pipeline's tariff (including Cost Recovery Mechanisms for Modernization of Natural Gas Facilities filings in Docket No. PL15–1) and any related compliance filings; (2) Rate Filings—rate-related filings under NGA sections 4 and 5 and any related compliance filings and settlements; (3) Informational Reports; (4) Negotiated Rate and Non-Conforming Agreement Filings; and (6) Market-Based Rates for Storage Filings (Part 284.501–505). One-time compliance filings mandated in Order No. 587–W (Docket Nos. RM96–1–038 and RM14–2–003) and Order No. 801 (Docket No. RM14–21–000) are excluded from this data collection renewal.

Type of Respondents: Natural gas pipelines under the jurisdiction of NGA.

Estimate of Annual Burden:[1] The Commission estimates the annual public reporting burden for the information collection as:

FERC–545: GAS PIPELINE RATES: RATE CHANGE (NON-FORMAL)

	Number of respondents (1)	Average number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden and cost per response[2] (4)	Total annual burden hours and total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Tariff Filings	124	2.597	322	211 hrs.; $24,054	67,947 hrs.; $7,745,958	$62,467
Rate Filings	17	1.412	24	354 hrs.; $40,356	8,497 hrs.; $968,658	56,980
Informational Reports	101	2.347	237	235 hrs.; $26,790	55,706 hrs.; $6,350,484	62,876
Negotiated Rates & Non-Conforming Agreement Filings.	65	9.923	645	233 hrs.; $26,562	150,285 hrs.; $17,132,490	263,577
Market-Base Rates for Storage Filings	4	1	4	230 hrs.; $26,220	920 hrs.; $104,880	26,220
Total			1,232		283,355 hrs.; $32,302,470	

FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines

OMB Control No.: 1902–0174.

Abstract: The business practice standards under FERC–549C are required to carry out the Commission's policies in accordance with the general authority in sections 4, 5, 7, 8, 10, 14, 16, and 20 of the Natural Gas Act (NGA),[3] and sections 311, 501, and 504 of the Natural Gas Policy Act of 1978 (NGPA).[4] The Commission adopted these business practice standards in order to update and standardize the natural gas industry's business practices and procedures in addition to improving the efficiency of the gas market and the means by which the gas industry conducts business across the interstate pipeline grid.

In various orders since 1996, the Commission has adopted regulations to standardize the business practices and communication methodologies of interstate natural gas pipelines proposed by the North American Energy Standards Board (NAESB) in order to create a more integrated and efficient pipeline industry.[5] Generally, when and if NAESB-proposed standards (*e.g.,* consensus standards developed by the Wholesale Gas Quadrant (WGQ)[6]) are approved by the Commission, the Commission incorporates them by reference into its approval. The process of standardizing business practices in the natural gas industry began with a Commission initiative to standardize electronic communication of capacity release transactions. The outgrowth of the initial Commission standardization efforts produced working groups composed of all segments of the natural gas industry and, ultimately, the Gas Industry Standards Board (GISB), a consensus organization open to all members of the gas industry was created. GISB was succeeded by NAESB.

NAESB is a voluntary non-profit organization comprised of members from the retail and wholesale natural gas and electric industries. NAESB's mission is to take the lead in developing standards across these industries to simplify and expand electronic communication and to streamline business practices. NAESB's core objective is to facilitate a seamless North American marketplace for natural gas, as recognized by its customers, the business community, industry participants, and regulatory bodies. NAESB has divided its efforts among four quadrants including two retail quadrants, a wholesale electric quadrant, and the WGQ. The NAESB WGQ standards are a product of this

[1] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[2] The estimated hourly cost (salary plus benefits) provided in this section is based on the salary figures for May 2017 posted by the Bureau of Labor Statistics for the Utilities sector (available at *http://www.bls.gov/oes/current/naics2_22.htm#13-0000*) and scaled to reflect benefits using the relative importance of employer costs in employee compensation from May 2017 (available at *https://www.bls.gov/oes/current/naics2_22.htm*). The hourly estimates for salary plus benefits are:

Computer and Mathematical (Occupation Code: 15–0000), $63.25.

Economist (Occupation Code: 19–3011), $71.98.

Legal (Occupation Code: 23–0000), $143.68.

Accountants and Auditors: 13–2011), $56.59.

The average hourly cost (salary plus benefits) is calculated weighting each of the aforementioned wage categories as follows: $63.25 (0.05) + $71.98 (0.3) + $143.68 (0.6) + $56.59 (0.05) = $113.79. The Commission rounds it to $114/hour.

[3] 15 U.S.C. 717c–717w.

[4] 15 U.S.C. 3301–3432.

[5] This series of orders began with the Commission's issuance of *Standards for Business Practices of Interstate Natural Gas Pipelines,* Order No. 587, FERC Stats. & Regs. ¶ 31,038 (1996).

[6] An accredited standards organization under the auspices of the American National Standards Institute (ANSI).

effort. Industry participants seeking additional or amended standards (to include principles, definitions, standards, data elements, process descriptions, and technical implementation instructions) must submit a request to the NAESB office, detailing the change, so that the appropriate process may take place to amend the standards.

Failure to collect the FERC–549C data would prevent the Commission from monitoring and properly evaluating pipeline transactions and/or meeting statutory obligations under both the NGA and NGPA.

Type of Respondent: Natural gas pipelines under the jurisdictions of NGA and NGPA.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden for the information collection as:

FERC–549C: STANDARDS FOR BUSINESS PRACTICES OF INTERSTATE NATURAL GAS PIPELINES

	Number of respondents	Average number of responses per respondent	Total number of responses	Average burden and cost per response [7]	Total annual burden hours and total annual cost	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Standards for Business Practices of Interstate Natural Gas Pipelines.	165	2.96	490	96 hrs.; $8,640	47,040 hrs.; $4,233,600	$25,658

Dated: August 10, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17656 Filed 8–15–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC18–133–000.
Applicants: Union Electric Company, TG High Prairie, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Union Electric Company, Inc., et al.
Filed Date: 8/9/18.
Accession Number: 20180809–5035.
Comments Due: 5 p.m. ET 8/30/18.

Docket Numbers: EC18–134–000.
Applicants: Boulder Solar III, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Boulder Solar III, LLC.
Filed Date: 8/9/18.
Accession Number: 20180809–5140.
Comments Due: 5 p.m. ET 8/30/18.

Docket Numbers: EC18–135–000.
Applicants: 64KT 8me LLC.
Description: Application for Authorization under Section 203 of the Federal Power Act, et al. of 64KT 8me LLC.
Filed Date: 8/9/18.
Accession Number: 20180809–5146.
Comments Due: 5 p.m. ET 8/30/18.

Docket Numbers: EC18–136–000.
Applicants: JERA Power Compass, LLC, Dighton Power, LLC, Marco DM Holdings, L.L.C., Marcus Hook Energy, L.P., Marcus Hook 50, L.P., Milford Power, LLC.
Description: Joint Application for Authorization under Section 203 of the Federal Power Act, et al. of JERA Power Compass, LLC, et al.
Filed Date: 8/9/18.
Accession Number: 20180809–5148.
Comments Due: 5 p.m. ET 8/30/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–2194–000.
Applicants: Fox Creek Farm Solar, LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 9/7/2018.
Filed Date: 8/10/18.
Accession Number: 20180810–5003.
Comments Due: 5 p.m. ET 8/31/18.

Docket Numbers: ER18–2195–000.
Applicants: South Carolina Electric & Gas Company.
Description: § 205(d) Rate Filing: SCPSA Interconnection Agreement to be effective 8/10/2018.
Filed Date: 8/10/18.
Accession Number: 20180810–5053.
Comments Due: 5 p.m. ET 8/31/18.

Docket Numbers: ER18–2196–000.
Applicants: The Potomac Edison Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Potomac Edison submits a Construction Agreement, Service Agreement No. 4799 to be effective 10/10/2018.
Filed Date: 8/10/18.
Accession Number: 20180810–5060.
Comments Due: 5 p.m. ET 8/31/18.

Docket Numbers: ER18–2197–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Clean-up to OATT, Schedule 12—Appendix A (PSEG) to be effective 1/1/2017.
Filed Date: 8/10/18.
Accession Number: 20180810–5087.
Comments Due: 5 p.m. ET 8/31/18.

Docket Numbers: ER18–2198–000.
Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.
Description: § 205(d) Rate Filing: 2018–08–10_SA 3146 Minnesota Power-GRE (Knife Falls) T–L Interconnection Agrmt to be effective 9/1/2018.
Filed Date: 8/10/18.
Accession Number: 20180810–5091.
Comments Due: 5 p.m. ET 8/31/18.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES18–55–000.
Applicants: Citizens Sycamore-Penasquitos Transmission LLC.
Description: Application for Authorization under Section 204 of the Federal Power Act of Citizens Sycamore-Penasquitos Transmission LLC.
Filed Date: 8/9/18.
Accession Number: 20180809–5145.
Comments Due: 5 p.m. ET 8/30/18.

The filings are accessible in the Commission's eLibrary system by

[7] The estimated hourly cost (salary plus benefits) provided in this section is based on the salary figures for May 2017 posted by the Bureau of Labor Statistics for the Utilities sector (available at *http://www.bls.gov/oes/current/naics2_22.htm#13-0000*) and scaled to reflect benefits using the relative importance of employer costs in employee compensation from May 2017 (available at *https://www.bls.gov/oes/current/naics2_22.htm*). The hourly estimates for salary plus benefits are:

Petroleum Engineer (Occupation Code: 17–2051), $71.62.

Computer Systems Analysts (Occupation Code: 15–1120), $46.26.

Legal (Occupation Code: 23–0000), $143.68.

Economist (Occupation Code: 19–3011), $71.98.

The average hourly cost (salary plus benefits) is calculated weighting each of the aforementioned wage categories as follows: $71.62 (0.3) + $143.68 (0.3) + $46.26 (0.15) + $71.98 (0.25) = $89.52. The Commission rounds it to $90/hour.

clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 10, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17651 Filed 8–15–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2194–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Fox Creek Farm Solar, LLC

This is a supplemental notice in the above-referenced proceeding of Fox Creek Farm Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 30, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 10, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17654 Filed 8–15–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–534–000]

Notice of Application: Northern Natural Gas Company

Take notice that on July 27, 2018, Northern Natural Gas Company (Northern Natural), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP18–534–000 an application pursuant to section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, requesting authorization to: (1) Construct and operate certain compressor, pipeline and town border station facilities; (2) upgrade the maximum allowable operating pressure (MAOP) on a segment of an existing branch line and relocate a MAOP regulator; and (3) abandon short segments of pipeline to accommodate tie-ins, all located in various counties in Minnesota (Northern Lights 2019 Expansion Project and Rochester Project). Combined, the projects will increase peak-day service by 138,504 dekatherms per day (Dth/d). Northern Natural is also requesting approval for rolled-in rate treatment for the projects, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Michael T. Loeffler, Senior Director, Certificates and External Affairs, Northern Natural Gas Company, 1111 South 103rd Street, Omaha, Nebraska 68124, or by calling (402) 398–7103.

Specifically, Northern Natural proposes the following facilities as part of the Northern Lights 2019 Expansion: (1) 10.0-mile-long, 24-inch-diameter pipeline in Hennepin and Wright Counties; (2) 4.3-mile-long, 8-inch-diameter extension of the existing Alexandria branch line loop in Morrison County; (3) 1.6-mile-long, 6-inch-diameter loop of the existing New Prague branch line in Le Sueur County; (4) 3.1-mile-long, 24-inch-diameter extension of the existing Willmar C-line in Carver County; (5) new 11,153 horsepower (HP) Carver compressor station (CS) in Carver County; (6) one additional 15,900 HP compressor unit at Faribault CS in Rice County; and (7) one 15,900 HP compressor unit at Owatonna CS in Steele County. The Northern Lights 2019 Expansion project will allow Northern Natural to deliver 101,411 Dth/d of incremental peak day capacity. The estimated cost for the Northern Lights 2019 Expansion project is $158,070,870.

As part of the Rochester Project, Northern Natural proposes to: (1) Construct and operate a 12.2-mile-long, 16-inch-diameter branch line with a new delivery point at its terminus in Olmsted County; (2) increase the MAOP of an 8-mile-long segment of its 16-inch-diameter La Crosse branch line in Freeborn and Mower Counties; and (3) relocate am existing MAOP control valve assembly from Freeborn County to Mower County. The Rochester Project will generate additional 37,093 Dth/d of incremental peak day service. The estimated cost for the Rochester project is $31,416,479.

On October 16, 2017, the Commission staff granted Northern Natural's request to utilize the Pre-Filing Process and assigned Docket No. PF18–1–000 to staff activities involved for the above referenced projects. Now, as of the filing of the July 30, 2018 application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP18–534–000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit five copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit original and five copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on August 31, 2018.

Dated: August 10, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17652 Filed 8–15–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–438]

Grand River Dam Authority; Notice of Modification of Procedural Schedule

Take notice that the schedule for processing the following hydroelectric application has been modified.

a. *Type of Application:* Notice of Intent to File License Application for a New License and Commencing Pre-filing Process.

b. *Project No.:* 1494–438.

c. *Date Filed:* February 1, 2017.

d. *Applicant:* Grand River Dam Authority (GRDA).

e. *Name of Project:* Pensacola Hydroelectric Project.

f. *Location:* The project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. The project occupies federal land.[1]

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Applicant Contact:* Dr. Darrell Townsend, Assistant General Manager, GRDA, 420 Highway 28, Langley, OK 74359–0070; (918) 256–0616 or *dtownsend@grda.com.*

i. *FERC Contact:* Rachel McNamara at (202) 502–8340 or *rachel.mcnamara@ferc.gov.*

j. *Procedural Schedule:* The Commission's August 10, 2018, letter established August 21, 2018, as the new date for the additional Tribal Consultation meeting. The revised deadline for filing the Revised Proposed Study Plan is now September 24, 2018, and the revised deadline for filing comments on the Revised Proposed Study Plan is now October 24, 2018. As such, the application will be processed according to the following revised schedule. Revisions to the schedule may be made as appropriate. If a date falls on a weekend or holiday, the due date will be the following business day.

Milestone	Target date
File Revised Proposed Study Plan	September 24, 2018.
File Comments on Revised Proposed Study Plan	October 24, 2018.

[1] In a filing of April 11, 2018, the Bureau of Indian Affairs provided documentation that lands held in trust by the BIA for the benefit of one or more federally-recognized Indian tribes occur within the existing Pensacola Project boundary. The total acreage of federal lands within the project boundary is unknown at this time.

Milestone	Target date
Commission Issues Study Plan Determination	November 8, 2018.
Notice of Formal Study Dispute (if necessary)	November 28, 2018.
Commission Issues Study Dispute Determination (if necessary)	February 6, 2019.

Dated: August 10, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17655 Filed 8–15–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator and Foreign Utility Company Status

	Docket Nos.
East Hampton Energy Storage Center, LLC	EG18–80–000
Montauk Energy Storage Center, LLC	EG18–81–000
Armadillo Flats Wind Project, LLC	EG18–82–000
Heartland Divide Wind Project, LLC	EG18–83–000
Antelope Expansion 2, LLC	EG18–84–000
Pegasus Wind, LLC	EG18–85–000
Thunder Spirit Wind, LLC	EG18–86–000
Pratt Wind, LLC	EG18–87–000
Stoneray Power Partners, LLC	EG18–88–000
Copenhagen Wind Farm, LLC	EG18–89–000
Rio Bravo Windpower, LLC	EG18–90–000
Minco Wind IV, LLC	EG18–91–000
Minco Wind V, LLC	EG18–92–000
Lorenzo Wind, LLC	EG18–93–000
Wildcat Ranch Wind Project, LLC	EG18–94–000
Enbridge Rampion UK Ltd	FC18–5–000

Take notice that during the month of July 2018, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2017).

Dated: August 10, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17653 Filed 8–15–18; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 17–179; FCC 18–100]

Sinclair Broadcast Group, Inc. and Tribune Media Company, Applications for Transfer of Control of Tribune Media Company and Certain Subsidiaries, WDCW(TV)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document commences a hearing to determine whether granting the applications filed by Tribune Media Company (Tribune) and Sinclair Broadcast Group, Inc. (Sinclair) seeking to transfer control of Tribune subsidiaries to Sinclair would be in the public interest. The Commission has designated the applications for hearing after finding that there were substantial and material questions of fact as to whether; Sinclair was a ''real party in interest'' to the sale of certain broadcast stations; Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission; and consummation of the overall transaction would be in the public interest, including whether it would comply with § 73.3555 of the Commission's rules.

DATES: Persons desiring to participate as parties in the hearing shall file a petition for leave to intervene not later than September 17, 2018.

ADDRESSES: File documents with the Office of the Secretary, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, with a copy mailed to each party to the proceeding. Each document that is filed in this proceeding must display on the front page the docket number of this hearing, ''MB Docket No. 17–179.''

FOR FURTHER INFORMATION CONTACT: David Brown, *David.Brown@fcc.gov,* Media Bureau, (202) 418–1645.

SUPPLEMENTARY INFORMATION: This is a summary of the Hearing Designation Order (Order), MB Docket No. 17–139, FCC 18–100, adopted July 18, 2018, and released July 19, 2018. The full text of the Order is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW, Washington, DC 20554. The full text is also available online at *http://apps.fcc.gov/ecfs/.*

Summary of the Hearing Designation Order

1. On June 28, 2017, Sinclair Broadcast Group, Inc. (Sinclair) and Tribune Media Company (Tribune) filed applications seeking to transfer control of Tribune subsidiaries to Sinclair. Sinclair and Tribune have amended their applications several times thereafter, in an attempt to bring the transaction into compliance with the Commission's national television multiple ownership rule, as well as the public interest requirements of the Communications Act of 1934, as amended (the Act).

2. Among these applications were three that, rather than transfer broadcast television licenses in Chicago, Dallas, and Houston directly to Sinclair, proposed to transfer these licenses to other entities. According to the proposals, Sinclair would divest WGN–TV, Chicago, Illinois, to WGN TV, LLC, a newly-created entity by Steve Fader, an individual with no broadcast experience, for a purchase price of approximately $60 million. Sinclair would also divest KDAF(TV), Dallas Texas, and KIAH(TV), Houston, Texas, to Cunningham Broadcast Corporation (Cunningham) for a combined purchase price of approximately $60 million. The Commission notes that the proposed transfer applications to Fader and Cunningham were withdrawn on July 18, 2018.

3. Multiple formal pleadings have been filed opposing this latest divestiture plan. Most opponents challenge the divestitures as ''shams'' intended to circumvent the local and national television multiple ownership rules and find most egregious the proposed divestitures to Fader and Cunningham. Some parties question whether Sinclair will hold *de facto* control over WGN TV, LLC. Specifically, they question the reasonableness of the terms of the transaction, including a purchase price of only $60 million, and Sinclair's plans to enter into a Joint Sales Agreement (JSA), Shared Services Agreement (SSA), and Option with WGN TV, LLC at closing. The parties also question Fader's independence from Sinclair given that Fader and David Smith, currently a director and controlling shareholder of Sinclair and formerly its CEO, are business partners outside of the broadcast industry. Specifically, Fader is the CEO of Atlantic Automotive Group (Atlantic), in which David Smith has a controlling interest and serves as a member of its board of directors, and Atlantic is a Sinclair advertiser and tenant. Similarly, some parties argue that the sale of stations in Dallas and Houston to Cunningham are in name only and warrant a hearing. According to the objectors, problematic aspects of

the proposed divestitures of the Texas stations include: The intertwined relationship between Sinclair and Cunningham, particularly in light of past Commission findings regarding the nature of the relationship; the recent acquisition of the voting shares of Cunningham by Michael Anderson, a Sinclair associate, for a $400,000 sales price that is far below market value; the fact that the children of Sinclair's controlling shareholders are beneficiaries of trusts controlling the non-voting shares of Cunningham with the parents holding options to buy the voting shares in the future; and Sinclair's apparent guarantee of $53.6 million of Cunningham's debt.

4. Under section 309(d) of the Act, 47 U.S.C. 309(d), ''[i]f a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be inconsistent [with the public interest, convenience, and necessity],'' it must formally designate the application for hearing in accordance with section 309(e) of the Act, 47 U.S.C. 309(e). Courts have stated that, in reviewing the record, the Commission must designate an application for hearing if ''the totality of the evidence arouses a sufficient doubt'' as to whether grant of the application would serve the public interest, *Serafyn* v. *FCC,* 149 F.3d 1213, 1216 (D.C. Cir. 1998) (*quoting Citizens for Jazz on WRVR, Inc.* v. *FCC,* 775 F.2d 392, 395 (D.C. Cir. 1985)). Section 310(d) of the Act, 47 U.S.C. 310(d), prohibits the transfer of control of a license, either *de jure* or *de facto,* without prior Commission consent.

5. Commission assignment and transfer applications require disclosure of and certifications from the ''real party in interest'' purchasing the stations at issue. The phrase ''real party-in-interest'' is used in connection with pending applications, while ''*de facto* control'' is used in connection with a licensed station, *In re Brasher,* Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing, 15 FCC Rcd 16326 (2000). The pertinent concern is whether someone other than the named applicant or licensee is or would be in control, s*ee Arnold L. Chase,* Memorandum Opinion and Order, 5 FCC Rcd 1642, 1648 n.5 (1990). As the Commission has explained, ''a real party in interest issue, by its very nature, is a basic qualifying issue in which the element of deception is necessarily subsumed,'' *see In the Matter of Maritime Communications/Land Mobile, LLC,* Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, 26 FCC Rcd 6520, 6534–6535 par. 36 (2011) (*citing Fenwick Island Broadcast Corp. & Leonard P. Berger,* Decision, 7 FCC Rcd 2978, 2979 (Rev. Bd. 1992) (citation omitted)). The test for determining whether an entity is a real-party-in-interest in an application is whether that entity ''has an ownership interest or is or will be in a position to actually or potentially control the operation of the station and/or applicant,'' *High Sierra Broadcasting, Inc.,* Order, 96 FCC.2d 423, 435 (Rev. Bd. 1983). In the related context of determining *de facto* control of an applicant or a licensee, we have traditionally looked beyond legal title and financial interests to determine who holds operational control of the station and/or applicant, *see WHDH, Inc.,* 17 FCC.2d 856, 863 (1969), *aff'd sub nom., Greater Boston Television Corp.* v. *FCC,* 444 F.2d 841 (D.C. Cir. 1970). In particular, the Commission examines the policies governing station programming, personnel, and finances. The Commission has long held that a licensee may delegate day-to-day operations without surrendering *de facto* control, so long as the licensee continues to set the policies governing these three indicia of control, *WGPR, Inc.,* 10 FCC Rcd 8140, 8142 (1995); *Choctaw Broadcasting Corp.,* 12 FCC Rcd 8534, 8539 (1997); *Southwest Texas Broadcasting Council,* 85 FCC.2d 713, 715 (1981).

6. The Commission's rule-based attribution benchmarks, which are set forth in Note 2 to § 73.3555 of the Commission's rules, 47 CFR 73.3555, note 2, and related precedent, have a different purpose in that they seek to identify those ownership interests that subject the holders to compliance with the multiple and cross-ownership rules because they confer a degree ''of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions,'' *Review of The Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests,* Report and Order, 14 FCC Rcd 12559, 12560 (1999), *subsequent hist. omitted* (''*1999 Attribution Order*''). The national television multiple ownership rule prohibits a single entity from owning television stations that, in the aggregate, reach more than 39 percent of the total television households in the United States, *see* 47 CFR 73.3555(e)(1), (e)(2)(i), and (e)(2)(ii).

7. Applying these principles to the transaction at issue, the Commission designates for hearing the applications in Attachment 1 because there exists a substantial and material question of fact as to whether Sinclair was the real party-in-interest to the WGN–TV, KDAF, and KIAH applications and if so, whether Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission. Accordingly, based upon the record, the Commission is unable to find that grant of this transaction would be consistent with the public interest. Specifically, in view of the longstanding and intertwined relationships between and among Sinclair, Fader, and Cunningham, along with sales terms that are atypically favorable to the buyers (specifically, purchase price, financing, and contractual agreements), substantial and material questions of fact exist as to whether: (1) Sinclair was the real party in interest to the sale of WGN–TV, KDAF(TV), and KIAH(TV); (2) Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission; and (3) whether consummation of the overall transaction would be in the public interest, including whether it would comply with § 73.3555 of the Commission's rules, 47 CFR 73.3555.

8. *Accordingly, it is ordered,* that, pursuant to sections 309(e) of the Act, 47 U.S.C. 309(e), and section 1.254 of the Commission's rules, 47 CFR 1.254, the above-captioned applications *are designated for hearing* to be held at a time and location specified in a subsequent Order by the Administrative Law Judge, upon the following questions: (a) Whether, in light of the issues presented above, Sinclair was the real party-in-interest to the WGN–TV, KDAF, and KIAH applications, and, if so, whether Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission; (b) whether consummation of the overall transaction would violate § 73.3555 of the Commission's rules, the broadcast ownership rules; (c) whether, in light of the evidence adduced on the issues presented, grant of the above-captioned applications would serve the public interest, convenience, and/or necessity, as required by sections 309(a) and 310(d) of the Act; and (d) whether, in light of the evidence adduced on the issues presented, the above-captioned applications should be granted or denied.

9. *It is further ordered,* that, pursuant to section 309(e) of the Act, 47 U.S.C. 309(e), and § 1.254 of the Commission's rules, 47 CFR 1.254, both the *burden of proceeding* with the introduction of evidence and the *burden of proof* with respect to issues specified above shall be upon Sinclair and Tribune. We are assigning the burdens in this manner because Sinclair and Tribune have the

particular knowledge of the specific facts at issue in this proceeding.

10. *It is further ordered,* that to avail themselves of the opportunity to be heard, Sinclair and Tribune pursuant to §§ 1.221(c) and 1.221(e) of the Commission's rules, 47 CFR 1.221(c) and 1.221(e), in person or by their respective attorneys, *shall file a written appearance,* stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in the Order. Such written appearance shall be filed within 20 days of the mailing of this Order pursuant to Paragraph 17 below. Pursuant to § 1.221(c) of the Commission's rules, 47 CFR 1.221(c), if the applicants fail to file an appearance within the specified time period, or have not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the assignment applications will be dismissed with prejudice for failure to prosecute.

11. *It is further ordered,* that Dallas (KDAF–TV) Licensee (Cunningham), Houston (KIAH–TV) Licensee (Cunningham), and WGN TV, LLC (Fader) and the following petitioners to deny in Exhibit 1 are made parties to the proceeding pursuant to § 1.221(d) of the Commission's rules, 47 CFR 1.221(d). To avail themselves of the opportunity to be heard, pursuant to § 1.221(e) of the Commission's rules, 47 CFR 1.122(e), each of these parties, in person or by its attorneys, *shall file a written appearance,* stating its intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Such written appearance shall be filed within 20 days of the mailing of this Order pursuant to Paragraph 17 below. If any of these parties fails to file an appearance within the time specified, it shall, unless good cause for such failure is shown, forfeit its hearing rights.

12. *It is further ordered,* that the Chief, Enforcement Bureau, shall be made a party to this proceeding without the need to file a written appearance.

13. *It is further ordered,* that a copy of each document filed in this proceeding subsequent to the date of adoption of this document *shall be served* on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations & Hearings Division of the Enforcement Bureau at (202) 418–1420. Such service copy *shall be addressed* to the named counsel of record, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

14. *It is further ordered,* that Sinclair and Tribune, pursuant to section 311(a)(2) of the Act, 47 U.S.C. 311(a)(2), and Section 73.3594 of the Commission's rules, 47 CFR 73.3594, *shall give notice* of the hearing within the time and in the manner prescribed in such Rules, and *shall advise* the Commission of the publication of such notice as required by § 73.3594(g) of the Rules, 47 CFR 73.3594(g).

15. *It is further ordered,* that a copy of this document, or a summary thereof, shall be published in the **Federal Register**.

16. *It is further ordered,* that, within fifteen (15) days of the date that *written appearances* are due, the Administrative Law Judge shall issue a Scheduling Order that includes a set date for resolution.

17. *It is further ordered,* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center *shall send* a copy of this Order by certified mail/return receipt requested to:

Dallas (KDAF–TV) Licensee, Inc., Houston (KIAH–TV) Licensee, Inc., 2000 W. 41st Street, Baltimore, MD 21211

Sinclair Broadcast Group, Inc., c/o Miles Mason, Esq., Pillsbury Winthrop Shaw Pittman LLP, 1200 17th Street NW, Washington, DC 20036

WGN TV, LLC, 1 Olympic Place, Suite 1200, Towson, MD 21204.

Tribune Media Company, c/o Mace Rosenstein, Esq., Covington & Burling LLP, One CityCenter, 850 10th Street NW, Washington, DC 20001

American Cable Association

Matthew M. Polka, President and CEO, American Cable Association, 875 Greentree Road, Seven Parkway Center, Suite 755, Pittsburgh, Pennsylvania 15220, (412) 922–8300

Ross J. Lieberman, Senior Vice President of Government Affairs, American Cable Association, 2415 39th Place NW, Washington, DC 20007, (202) 494–5661

DISH Network LLC

Pantelis Michalopoulos, Stephanie A. Roy, Christopher Bjornson, Steptoe & Johnson LLP, 1330 Connecticut Ave NW, Washington, DC 20036, (202) 429–3000

Jeffrey H. Blum, Senior Vice President & Deputy General Counsel, Alison Minea, Director and Senior Counsel, Regulatory Affairs, Hadass Kogan, Corporate Counsel, DISH Network L.L.C., 1110 Vermont Avenue NW, Suite 750, Washington, DC 20005, (202) 293–0981

Free Press

Dana J. Floberg, Matthew F. Wood, Free Press, 1025 Connecticut Ave NW, Suite 1110, Washington DC, 20036, 202–265–1490

Competitive Carriers Association

Steven K. Berry, President & CEO, Rebecca Murphy Thompson, EVP & General Counsel, Courtney Neville, Policy Counsel, Competitive Carriers Association, 805 15th Street NW, Suite 401, Washington, DC 20005, (202) 449–9866

Newsmax Media, Inc., Jonathan D. Schiller, Boies Schiller Flexner LLP, 575 Lexington Ave, 7th Floor, New York, NY 10022, (212) 446–2300, Robert M. Cooper, Richard A. Feinstein, Boies Schiller Flexner LLP, 1401 New York Ave. NW, Washington, DC 20005, (202) 237–2727

NTCA—The Rural Broadband Association

Stephen Pastorkovich, Vice President, Technology & Business Development, Richard J. Schadelbauer, Manager, Economic Research and Analysis, Jill Canfield, Vice President, Legal & Industry, Assistant General Counsel, NTCA—The Rural Broadband Association, 121 Wilson Boulevard, Suite 1000, Arlington, VA 22203

Public Knowledge, Common Cause, and United Church of Christ, OC Inc.

Yosef Getachew, Phillip Berenbroick, Public Knowledge, 1818 N St. NW, Suite 410, Washington, DC 20005, (202) 861–0020

Todd O'Boyle, Common Cause, 805 15th Street NW, Suite 800, Washington, DC 20007, (202) 833–1200

Cheryl A. Leanza, United Church of Christ, OC Inc., 100 Maryland Ave. NE, Suite 330, Washington, DC 20002

Steinman Communications

Repp Law Firm, 1629 K Street NW, Suite 300, Washington, DC 20006–1631, (202) 656–1619

Attorneys General of the States of Illinois, California, Iowa, Oregon, Rhode Island, and the District of Columbia

Susan L. Satter, Public Utilities Policy Counsel, Public Utilities Bureau, Anna P. Crane, Counsel, Public Interest Division, Matthew J. Martin, Counsel, Public Interest Division, Office of the Illinois Attorney General, 100 West Randolph Street, Chicago, Illinois 60601, Telephone: (312) 814–3000

Cinemoi, Herndon-Reston Indivisible, International Cinematographers Guild, Latino Victory Project, National Association of Broadcast Employees and Technicians—CWA, NTCA, Public Knowledge, RIDE Television Network, and Sports Fan Coalition

Michael Fletcher, Chief Executive Officer, RIDE Television Network, 1025 S Jennings Ave., Fort Worth, TX 76104

Charlie Braico, President, National Association of Broadcast Employees and Technicians—CWA, 501 3rd Street NW, Washington, DC 20001

Dave Twedell, Business Representative, International Cinematographers Guild, 7755 Sunset Blvd., Los Angeles, CA 90046

Jill Canfield, Vice President, Legal & Industry Assistant General Counsel, NTCA—The Rural Broadband Association, 4121 Wilson Boulevard, Suite 1000, Arlington, VA 22203

Phillip Berenbroick, Senior Policy Counsel, Public Knowledge, 1818 N Street NW, Suite 410, Washington, DC 20036

David Goodfriend, Chairman, Sports Fans Coalition, 1300 19th Street NW, Suite 500, Washington, DC 20036

Daphna Edwards Ziman, President, Cinemoi, 6380 Wilshire Blvd., Suite 910, Los Angeles, CA 90048

Howard M. Weiss, Member, Herndon-Reston Indivisible, 3061 Mt. Vernon Ave., #N405, Alexandria, VA 22305

Jason Rieger, Director, Indivisible Chicago Alliance, Chicago, IL

Communications Workers of America, National Association of Broadcast Employees and Technicians—CWA, the NewsGuild—CWA

Brian Thorn, Debbie Goldman, 501 Third Street NW, Washington, DC 20001, (202) 434–1131 (phone), (202) 434–1201 (fax)

National Hispanic Media Coalition, Common Cause, and United Church of Christ, OC Inc.

Carmen Scurato, Esq., Francella Ochillo, Esq., National Hispanic Media Coalition, 65 South Grand Avenue, Suite 200, Pasadena, CA 91105, (626) 792–6462

Yosef Getachew, Common Cause, 805 15th Street NW, Washington, DC 20005, (202) 833–1200

Cheryl A. Leanza, United Church of Christ, OC Inc., 100 Maryland Ave. NE, Suite 330, Washington, DC 20002

Federal Communications Commission.

Marlene Dortch,

Secretary.

ATTACHMENT 1

Call sign	Community of license	FAC ID	File No.
KDAF	Dallas, TX	22201	BTCCDT–20170626AGH
KIAH	Houston, TX	23394	BTCCDT–20170626AGL
KPLR–TV	St. Louis, MO	35417	BTCCDT–20170626AGO
KRCW–TV	Salem, OR	10192	BTCCDT–20170626AFZ
KRCW–LP	Portland, OR	35151	BTCCDT–20170626AGA
K20ES	Pendleton, Etc., OR	12671	BTCCDT–20170626AGB
K24DX	Pendleton, Etc., OR	12678	BTCCDT–20170626AGC
KSTU	Salt Lake City, UT	22215	BTCCDT–20170626AFH
KKRP–LD	St. George, UT	70979	BTCCDT–20170626AFI
K14PA–D	Rural Juab County, UT	22202	BTCCDT–20170626AFP
K15FQ–D	Milford, Etc., UT	22214	BTCCDT–20170626AFO
K17HM–D	Wendover, UT	22217	BTCCDT–20170626AFN
K22DE	Tooele, UT	69280	BTCCDT–20170626AFM
K25HF–D	Heber City, UT	22212	BTCCDT–20170626AFL
K35OP–D	Park City, UT	22213	BTCCDT–20170626AFK
K43CC–D	Santa Clara, UT	22205	BTCCDT–20170626AFJ
KSWB–TV	San Diego, CA	58827	BTCCDT–20170626AFT
KTLA	Los Angeles, CA	35670	BTCCDT–20170626AFY
KTVI	St Louis, MO	35693	BTCCDT–20170626AGF
KTXL	Sacramento, CA	10205	BTCCDT–20170626AGP
KWGN–TV	Denver, CO	35883	BTCCDT–20170626AGI
KDVR	Denver, CO	126	BTCCDT–20170626AGN
KFCT	Fort Collins, CO	125	BTCCDT–20170626AGM
KFSM–TV	Fort Smith, AR	66469	BTCCDT–20170626ADY
KXNW	Eureka Springs, AR	81593	BTCCDT–20170626ADZ
WCCT–TV	Waterbury, CT	14050	BTCCDT–20170626AFR
WTIC–TV	Hartford, CT	147	BTCCDT–20170626AFR
WTTK	Kokomo, IN	56526	BTCCDT–20170626AFU
WTTV	Bloomington, IN	56523	BTCCDT–20170626AFV
WXIN	Indianapolis, IN	146	BTCCDT–20170626AFW
KAUT–TV	OKC, OK	50182	BTCCDT–20170626AEM
K15HL–D	Cherokee, etc., OK	167263	BTCCDT–20170626AFF
K16DX–D	Gage, OK	59851	BTCCDT–20170626AFE
K17ID–D	Cherokee, etc., OK	167261	BTCCDT–20170626AFD
K19GZ–D	Seiling, OK	167252	BTCCDT–20170626AFC
K20BR–D	Gage, etc., OK	59840	BTCCDT–20170626AFB
K20JD–D	Cherokee, etc. OK	167259	BTCCDT–20170626AFA
K22BR–D	May, Et., OK	59849	BTCCDT–20170626AEZ
K22ID–D	Cherokee, Etc, OK	167257	BTCCDT–20170626AEY
K25JQ–D	May, Etc., OK	167251	BTCCDT–20170626AEX
K26IS–D	Woodward, Etc., OK	167265	BTCCDT–20170626AEW
K28JX–D	Alva—Cherokee, OK	167255	BTCCDT–20170626AEV
K29HZ–D	Woodward, Etc., OK	167264	BTCCDT–20170626AEU
K31JQ–D	Woodward, Etc., OK	167262	BTCCDT–20170626AET
K33JM–D	Mooreland, Etc., OK	167260	BTCCDT–20170626AES

ATTACHMENT 1—Continued

Call sign	Community of license	FAC ID	File No.
K38KH–D	Woodward, Etc., OK	167258	BTCCDT–20170626AER
K41KS–D	Seiling, OK	167256	BTCCDT–20170626AEQ
K43KU–D	Seiling, OK	167254	BTCCDT–20170626AEP
K47LB–D	Seiling, OK	167253	BTCCDT–20170626AEO
K49DO–D	Seiling, OK	59848	BTCCDT–20170626AEN
KFOR–TV	OKC, OK	66222	BTCCDT–20170626AEL
KCPQ	Tacoma, WA	33894	BTCCDT–20170626AGQ
KZJO	Seattle, WA	69571	BTCCDT–20170626AGR
K07ZC–D	Ellensburg, etc., WA	33896	BTCCDT–20170626AGS
K25CG–D	Aberdeen, WA	33898	BTCCDT–20170626AGT
K25CH–D	North Bend, WA	69575	BTCCDT–20170626AGU
K28KJ–D	Chelan, WA	33899	BTCCDT–20170626AGV
K29ED–D	Everett, WA	69574	BTCCDT–20170626AGW
K42CM–D	Centralia, etc., WA	33895	BTCCDT–20170626AGX
WGNO	New Orleans, LA	72119	BTCCDT–20170626AEF
WNOL–TV	New Orleans, LA	54280	BTCCDT–20170626AEE
WDAF–TV	Kansas City, MO	11291	BTCCDT–20170626AFQ
WDCW	Washington, DC	30576	BTCCDT–20170626AGJ
WGHP	High Point, NC	72106	BTCCDT–20170626AEG
WGN(AM)	Chicago, IL	72114	BTCCDT–20170626AGD
WGN–TV	Chicago, IL	72115	BTCCDT–20170626AGE
WHNT–TV	Huntsville, AL	48693	BTCCDT–20170626AEA
WHO–DT	Des Moines, IA	66221	BTCCDT–20170626AEB
WITI	Milwaukee, WI	73107	BTCCDT–20170626AFG
WJW	Cleveland, OH	73150	BTCCDT–20170626AGK
WPHL–TV	Philadelphia, PA	73879	BTCCDT–20170626AGG
WPIX	New York, NY	73881	BTCCDT–20170626AFX
WPMT	York, PA	10213	BTCCDT–20170626AEK
WQAD–TV	Moline, IL	73319	BTCCDT–20170626ADX
WREG–TV	Memphis, TN	66174	BTCCDT–20170626AED
WSFL–TV	Miami, FL	10203	BTCCDT–20170626AGY
WTVR–TV	Richmond, VA	57832	BTCCDT–20170626AEC
WXMI	Grand Rapids, MI	68433	BTCCDT–20170626AEH
W17DF–D	Muskegon, MI	64442	BTCCDT–20170626AEJ
W42CB–D	Hesperia, MI	64440	BTCCDT–20170626AEI

[FR Doc. 2018–17095 Filed 8–15–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request (OMB No. 3064–0072)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its ongoing obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collection described below (OMB No. 3064–0072).

DATES: Comments must be submitted on or before October 15, 2018.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Jennifer Jones (202–898–6768), Counsel, MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jennifer Jones, Counsel, 202–898–6768, *jennjones@fdic.gov,* MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Acquisition Services Information Requirements.

OMB Number: 3064–0072.

Form Number: 3700/55 (Solicitation/Award); 1600/04 (Background Investigation Questionnaire for Contractor Personnel and Subcontractors); 1600/07 (Background Investigation Questionnaire for Contractors); 3700/12 (Integrity and Fitness Representations and Certifications); 3700/44 (Leasing Representations and Certifications); 3700/57 (Past Performance Questionnaire); 3700/04A (Contractor Representations and Certifications); and 3700/59 (Fair Inclusion of Minorities and Women).

Affected Public: Vendors of goods and services.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response	Frequency of response	Total annual estimated burden (hours)
Request for Proposal and Price Quotation (includes Basic Safeguards)—Solicitation/Award (Form 3700/55).	Reporting ...	Required to Obtain or Retain Benefits.	656	1	6.55	On Occasion ...	4,297
Request for Information	Reporting ...	Voluntary	44	1	37.63	On Occasion ...	1,656
Background Investigation Questionnaire for Contractor Personnel and Subcontractors (Form 1600/04).	Reporting ...	Required to Obtain or Retain Benefits.	2,400	1	0.33	On Occasion ...	792
Background Investigation Questionnaire for Contractors (Form 1600/07).	Reporting ...	Required to Obtain or Retain Benefits.	200	1	0.5	On Occasion ...	100
Integrity and Fitness Representations and Certifications (Form 3700/12).	Reporting ...	Required to Obtain or Retain Benefits.	12	1	0.33	On Occasion ...	4
Leasing Representations and Certifications (Form 3700/44).	Reporting ...	Required to Obtain or Retain Benefits.	15	1	1	On Occasion ...	15
Past Performance Questionnaire (Form 3700/57).	Reporting ...	Required to Obtain or Retain Benefits.	984	1	0.75	On Occasion ...	738
Contractor Representations and Certifications (Form 3700/04A).	Reporting ...	Required to Obtain or Retain Benefits.	12	1	0.33	On Occasion ...	4
Fair Inclusion of Minorities and Women (Form 3700/59).	Reporting ...	Required to Obtain or Retain Benefits.	100	1	2	On Occasion ...	200
Total Hourly Burden	....	....	....	....	....	....	7,806

General Description of Collection: This is a collection of information involving submission of information and various forms by contractors who desire to do business with the FDIC in connection with contract proposals submitted in response to FDIC solicitations.

In order to obtain competitive proposals and contracts from vendors interested in providing goods or services to the FDIC, the FDIC uses the Solicitation/Award request (Form 3700/55). This form is used in connection with a request for proposal and a request for price quotations.

In anticipation of a particular contract solicitation, the FDIC may first conduct market research to narrow down the list of potential contractors. This is done through a request for information (RFI). Following the RFI process, potential firms may be notified if they are to be included in the next phase of the acquisition process.

The FDIC Background Investigation Questionnaire for Contractor Personnel and Subcontractors (Form 1600/04), Background Investigation Questionnaire for Contractors (Form1600/07), Integrity and Fitness Representations and Certifications (Form 3700/12), and Leasing Representations and Certifications (Form 3700/44) are a result of the implementation of 12 CFR part 366. The FDIC adopted 12 CFR part 366 pursuant to Section 12(f)(3) and (4) of the Federal Deposit Insurance Act, 12 U.S.C. 1822(f)(3) and (4), and the rulemaking authority of the FDIC found at 12 U.S.C. 1819. Pursuant to those sections and consistent with the goals and purposes of titles 18 and 41 of the U.S. Code, the rule establishes the minimum standards of integrity and fitness that contractors, subcontractors, and employees of contractors and subcontractors must meet if they perform any service or function on behalf of the FDIC. This rule includes regulations governing conflicts of interest, ethical responsibility, and use of confidential information in accordance with 1822(f)(3); and the prohibitions and the submission of information in accordance with 1822(f)(4). This rule applies to a person who submits an offer to perform or performs, directly or indirectly, a contractual service or function on behalf of the FDIC.

In addition, the evaluation of an offeror's past performance under formal contracting procedures is a mandatory technical evaluation criterion in the FDIC's standard solicitation document. In support of the evaluation of the past performance criterion, the FDIC Past Performance Questionnaire (Form 3700/57) was developed to be submitted by other government agencies or commercial businesses who are doing business, or have done business, with the contractor that the FDIC is evaluating.

The FDIC Contractor Representations and Certifications form (Form 3700/4A) must be completed by any offeror that responds to a solicitation for an award over $100,000.

Finally, in connection with a contract proposal, the FDIC seeks a commitment from an FDIC contractor to ensure, to the maximum extent possible consistent with applicable law, the fair inclusion of minorities and women in its workforce and the workforces of its applicable subcontractors. The commitment is asserted by the FDIC Fair Inclusion of Minorities and Women form (Form 3700/59), which is a contract clause implementing Section 342(c)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5452). The clause asserts the FDIC's right to request documentation from the contractor that demonstrates the contractor's good faith effort to include minorities and women in its workforce and subcontractors' workforces.

The annual burden for this information collection is estimated to be 7,806 hours. This represents an increase of 5,472 hours from the current burden estimate of 2,334 hours. This increase is not due to any new requirements imposed by the FDIC. Rather, it is due to FDIC's reassessment of the burden hours associated with the contracting process and to better account for the burdens associated with requests for proposals and price quotations as well as RFIs.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, on August 13, 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–17647 Filed 8–15–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Report of Selected Money Market Rates (FR 2420; OMB No. 7100–0357). The revisions are applicable as of October 1, 2018.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

Report title: Report of Selected Money Market Rates.

Agency form number: FR 2420.

OMB control number: 7100–0357.

Effective Date: October 1, 2018.

Frequency: Daily.

Respondents: Commercial banks, savings associations, U.S. branches and agencies of foreign banks, International Banking Facilities, and significant banking organizations representing entities actively participating in the federal funds and/or other money markets.

Estimated number of respondents: 99 commercial banks and savings associations, 84 U.S. branches and agencies of foreign banks, 82 International Banking Facilities, and 1 significant banking organization.

Estimated average hours per response: 1.8 commercial banks and savings associations, 1.8 U.S. branches and agencies of foreign banks, 1.0 International Banking Facilities, and 1.8 significant banking organization.

Estimated annual burden hours: 44,550 commercial banks and savings associations, 37,800 U.S. branches and agencies of foreign banks, 20,500 International Banking Facilities, and 450 significant banking organization.

General description of report: The FR 2420 is a transaction-based report that collects daily liability data on federal funds purchased, selected borrowings from non-exempt entities, Eurodollar transactions, and time deposits and certificates of deposits (CDs) from (1) domestically chartered commercial banks and savings associations that have $18 billion or more in total assets as well as those that have total assets above $5 billion but less than $18 billion and meet the activity threshold, (2) U.S. branches and agencies of foreign banks with total third-party assets of $2.5 billion or more, and (3) significant banking organizations that are active participants in money markets.[1] The FR 2420 also collects daily data on Eurodollar transactions from International Banking Facilities (IBFs) of the above-referenced institutions. The FR 2420 data are used in the publication of the effective federal funds rate (EFFR) and overnight bank funding rate (OBFR) and in analysis of current money market conditions.

Legal authorization and confidentiality: The FR 2420 is authorized by section 11(a)(2) of the Federal Reserve Act, which authorizes the Board to require depository institutions to make such reports of their liabilities and assets as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates (12 U.S.C. 248(a)(2)). The FR 2420 is also authorized pursuant to section 7(c)(2) of the International Banking Act (IBA), which provides that Federal branches and agencies of foreign banks are subject to section 11(a) of the Federal Reserve Act as if they were a state member bank (12 U.S.C. 3105(c)(2)). Section 7(c)(2) of the IBA also provides that state-licensed branches and agencies of foreign banks are subject to the requirement in section 9 of the Federal Reserve Act that they file reports of condition with the appropriate Federal Reserve Bank (12 U.S.C. 324). The obligation to comply with the reporting requirements of FR 2420 is mandatory.

The individual financial institution information provided by each respondent would not be otherwise available to the public. The proposed revisions, as well as information currently collected, would be accorded confidential treatment under the

[1] A selected borrowing from a non-exempt entity is an unsecured borrowing (an unsecured primary obligation undertaken by the reporting institution as a means of obtaining funds) in U.S. dollars from a counterparty that is a non-exempt entity as derived from Regulation D, Section 204.2(a)(vii).

authority of exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)). Exemption 4 protects from disclosure trade secrets and privileged or confidential commercial or financial information.

Current actions: On May 18, 2018, the Board published a notice in the **Federal Register** (83 FR 23276) requesting public comment for 60 days on the extension, with revision, of the FR 2420. The Board proposes to revise the FR 2420 by adding Selected Deposits (Part D) and removing Selected Borrowings from Non-Exempt Entities (Part AA). Other minor edits in the reporting instructions are proposed to improve clarity. The first report for the proposed revisions to FR 2420 would be as of October 1, 2018. The comment period for this notice expired on July 17, 2018. The Board received one comment from a government entity supporting the continued collection of data on the FR 2420. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, August 13, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–17670 Filed 8–15–18; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–2970]

Agency Information Collection Activities; Proposed Collection; Comment Request; Surveys and Interviews With Investigational New Drug Sponsors To Assess Current Communication Practices With Food and Drug Administration Review Staff Under the Sixth Authorization of the Prescription Drug User Fee Act

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 and to allow 60 days for public comment in response to the notice. This notice solicits comments on a proposed information collection involving surveys and interviews of sponsors of commercial investigational new drugs (INDs) to obtain feedback about communication practices with FDA review staff.

DATES: Submit either electronic or written comments on the collection of information by October 15, 2018.

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 October 15, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of October 15, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–2970 for ''Surveys and Interviews with Investigational New Drug (IND) Sponsors to Assess Current Communication Practices with FDA Review Staff under the Sixth Authorization of the Prescription Drug User Fee Act (PDUFA VI).'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10 a.m.–12 p.m., 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *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.

Surveys and Interviews With Investigational New Drug (IND) Sponsors To Assess Current Communication Practices With FDA Review Staff Under the Sixth Authorization of the Prescription Drug User Fee Act (PDUFA VI)

OMB Control Number 0910—NEW

In Fiscal Year (FY) 2017, FDA published guidance on communications between FDA review staff and drug sponsors during the IND phase of drug development. As part PDUFA VI, FDA committed to a third-party assessment of current IND-phase communication practices, which should reflect this guidance. The contractor for the assessment of IND communication practices is Eastern Research Group, Inc. (ERG).

Therefore, in accordance with the PDUFA VI Commitment Letter, FDA proposes to have ERG conduct surveys and interviews with sponsors of up to 150 active commercial INDs as follows:

- For each formal meeting between FDA review staff and active commercial IND sponsors during the assessment period, send a survey to the sponsor to solicit specific feedback about communication practices employed for that meeting. *For the purpose of this assessment, formal meetings are Type A, B, B (End of Phase), and C meetings during the IND phase of drug development.*
- For each active commercial IND in the assessment, conduct an interview with the sponsor to obtain broader feedback about all communications with FDA review staff during the study period, including telephone and email interactions in addition to meetings.

The purpose of this information collection is to understand active commercial IND sponsor perspectives on communication during drug development with a focus on what is working well, ongoing challenges and pain points, lessons learned, and opportunities for improvement. The contractor will develop anonymized aggregated summaries of survey and interview responses, analyze this information to identify common themes, consider these results along with IND data and feedback from FDA review staff to develop a set of findings and recommendations, and prepare a report to be published on FDA's website. The contractor will keep information collected private; ERG will not disclose personally identifying information to FDA or any other party.

The number of commercial INDs with activity is approximately 4,000 per year. ERG will interview 1 to 3 sponsor representatives at a time for up to 150 INDs during the annual assessment period.

Thus, FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of respondent	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
IND sponsors: Surveys	150	1	150	0.17 (10 minutes)	25.50
IND sponsors: Interviews	450	1	450	1.5	675
Total					700.50

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that it will take each IND sponsor a maximum of 10 minutes to complete a survey. Up to 150 respondents will take part in the survey, yielding a maximum burden of 25.5 hours. FDA estimates that it will take each IND sponsor up to 90 minutes to respond to requests for interviews and participate in interviews. Up to 450 respondents will take part in interviews, yielding a maximum burden of 675 hours. FDA's burden estimates are based on experience with information collections for similar types of PDUFA-related assessments.

Dated: August 13, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–17715 Filed 8–15–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–2945]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) announces a forthcoming public advisory committee meeting of the Vaccines and Related Biological Products Advisory Committee (VRBPAC). The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. Members will participate via teleconference.

DATES: The meeting will be held on October 3, 2018, from 11 a.m. to 3:30 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Avenue, Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. For those unable to attend in person, the meeting will also be webcast and will be available at the following link: *https://collaboration.fda.gov/vrbpac1018.* Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Serina Hunter-Thomas, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 240–402–5771, *serina.hunter-thomas@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On October 3, 2018, the VRBPAC will meet in an open session to discuss and make recommendations on the selection of strains to be included in an influenza virus vaccine for the 2019 southern hemisphere influenza season.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 26, 2018. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 18, 2018. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 19, 2018.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Serina Hunter-Thomas at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 13, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–17702 Filed 8–15–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Advisory Committee on Rural Health and Human Services

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The Secretary's National Advisory Committee on Rural Health and Human Services (NACRHHS) has scheduled a public meeting. Information about NACRHHS and the agenda for this meeting can be found on the NACRHHS website at *https://www.hrsa.gov/advisory-committees/rural-health/index.html.*

DATES: September 10, 2018, 8:30 a.m.–5:15 p.m. ET; September 11, 2018, 8:30 a.m.–5:15 p.m. ET; September 12, 2018, 8:30 a.m.–11:15 a.m. ET.

ADDRESSES: On September 10, the address for the meeting is The Duke Endowment, 800 East Morehead Street, Charlotte, NC 28202.

On the morning of September 11, NACRHHS will break into subcommittees. One subcommittee will travel to Happy Valley Medical Center, 1345 NC Highway 268, Lenoir, NC 28645. The other subcommittee will travel to Winnsboro Smiles Dental Clinic, 124 N Congress Street, Winnsboro, SC 29180. In the afternoon, at approximately 4:00 p.m. ET., NACRHHS will reconvene at the AC Hotel Charlotte City Center, 220 E Trade Street, Charlotte, NC 28202.

On September 12, the address for the meeting is AC Hotel Charlotte City Center, 220 E Trade Street, Charlotte, NC 28202.

FOR FURTHER INFORMATION CONTACT: Steven Hirsch, Administrative Coordinator at the Federal Office of Rural Health Policy, HRSA, 5600 Fishers Lane, 17W59D, Rockville, Maryland 20857; 301–443–7322; or *shirsch@hrsa.gov.*

SUPPLEMENTARY INFORMATION: NACRHHS provides advice and recommendations to the Secretary of HHS (Secretary) on policy, program development, and other matters of significance concerning both rural health and rural human services.

During the September meetings, NACRHHS will discuss the issues of chronic obstructive pulmonary disease, one of the leading causes of mortality in rural areas, and the provision of oral health services in rural areas. Agenda items are subject to change as priorities dictate.

Members of the public will have the opportunity to provide comments.

Public participants may submit written statements in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to submit a written statement or make oral comments to NACRHHS should be sent to Steven Hirsch, using the contact information above at least 3 business days prior to the meeting.

Individuals who plan to attend and need special assistance or another reasonable accommodation should notify Steven Hirsch at the address and phone number listed above at least 10 business days prior to the meeting.

Amy P. McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2018–17623 Filed 8–15–18; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Opportunity to Co-Sponsor Office of Research Integrity Workshops

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: The Office of Research Integrity (ORI) announces the opportunity for non-federal public and private sector entities to co-sponsor ORI conferences or workshops (ORI Workshops). Potential co-sponsors must have a demonstrated interest and experience in the responsible conduct of research (RCR) or the handling of research misconduct allegations. Potential co-sponsors must be willing to participate substantively in the co-sponsored activity.

Expressions of interest for co-sponsorships of ORI Workshops are received throughout the year at the email address below. ORI co-sponsors a limited number of workshops with other entities each year. Expressions of interest are being received for ORI Workshops that will take place in the next fiscal year (October 2018 through September 2019) or beyond.

Expressions of interest for co-sponsorships should be sent by email to *AskORI@HHS.GOV* with ''Co-sponsorship for ORI Workshops'' in the subject field or by mail to ORI at 1101 Wootton Parkway, Suite 750, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Tracey Randolph, Program Analyst, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: ORI oversees and directs U.S. Public Health Service (PHS) research integrity activities on behalf of the Secretary of U.S. Department of Health and Human Services (HHS), with the exception of the regulatory research integrity activities of the Food and Drug Administration. ORI is a program office within the Office of the Assistant Secretary for Health, Office of the Secretary, HHS.

ORI's Division of Education and Integrity (DEI) has among its duties the responsibility to develop and implement activities and programs to teach RCR and train Research Integrity Officers (RIOs) as well as others that are involved in research integrity, such as Institutional Officials (IOs) and institutional counsel.

Consistent with ORI's mission and the applicable statutory authority, 42 U.S.C. 289b, ORI Workshops aim to provide clarification and technical information on the HHS regulations for handling research misconduct allegations and on education in RCR to foster integrity in research. ORI Workshops are moderately sized, convening over one to three days, and typically accepting between 20 and 50 attendees.

Co-sponsors will assist with workshop and agenda development, coordination, financial management, and meeting logistics in conjunction with ORI staff.

Co-sponsors can charge registration fees to recover costs associated with the events; however, co-sponsors may not set registration fees at an amount higher than necessary to recover related event expenses. Further, co-sponsors are solely responsible for collecting and handling any registration fees collected.

Eligibility for Co-Sponsorship: The co-sponsoring entity must have a demonstrated interest and experience in the RCR or the handling of research misconduct allegations. The co-sponsoring entity must participate substantively in the co-sponsored activity, not just provide funding or logistical support.

Each co-sponsorship expression of interest shall describe: (1) The entity's interest and goals in promoting research integrity or the RCR, (2) the entity's prior experience and current readiness to undertake the responsibilities described above, (3) the type of event(s) that the entity is interested in co-sponsoring with ORI, (4) facilities available for the event(s), and (5) any current constraints with respect to dates or facilities. The type of event may be an event from ORI's regular program of recurring events (*e.g.,* RCR Instructor's Workshop) or a special topic of mutual interest to be developed jointly. The expression of interest should be a bulleted outline, no more than two pages in length, single-spaced, and 11-point font. An entity may submit an expression of interest individually or jointly with other entities describing their relative contributions.

Evaluation Criteria: After engaging in exploratory discussions with potential co-sponsors that respond to this notice, the following considerations will be used by HHS officials, as appropriate and relevant, to select the co-sponsor(s):

- Qualifications and capability to fulfill co-sponsorship responsibilities
- suitability of the location of the proposed event in terms of the overall geographical distribution of ORI events
- potential for reaching, generating, and engaging adequate number of attendees from stakeholders
- availability and description of facilities needed to support the workshop
- availability of administrative support for the logistics of hosting such workshops

The selected co-sponsoring organization(s) shall furnish the necessary personnel, materials, services, and facilities to administer its responsibility for the workshop. These duties will be outlined in a co-sponsorship agreement with ORI that will set forth the details of the co-sponsored activity, including the requirements that any fees collected by the co-sponsor shall be limited to the amount necessary to cover the co-sponsor's related event expenses. This co-sponsorship agreement does not represent an endorsement by ORI of an individual co-sponsor's policies, positions, or activities. Additionally, this agreement will not affect any determination concerning activities by the co-sponsors that are regulated by ORI.

Dated: August 9, 2018.

Scott J. Moore,

Deputy Director, Office of Research Integrity.

[FR Doc. 2018–17615 Filed 8–15–18; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Blood and Tissue Safety and Availability

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Advisory Committee on Blood and Tissue Safety and Availability (ACBTSA) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will take place on Thursday, September 13, 2018, from 8:00 a.m.–5:00 p.m. ET.

ADDRESSES: Crystal City Marriott at Reagan National Airport, 1999 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. James Berger, Designated Federal Officer for the ACBTSA, Senior Advisor for Blood and Tissue Policy, Office of the Assistant Secretary for Health, Department of Health and Human Services, Mary E. Switzer Building, 330 C Street SW, Suite L100, Washington, DC 20024. Phone: (202) 795–7697; Fax: (202) 691–2102; Email: *ACBTSA@hhs.gov.*

SUPPLEMENTARY INFORMATION: The ACBTSA provides advice to the Secretary through the Assistant Secretary for Health. The Committee advises on a range of policy issues to include: (1) Identification of public health issues through surveillance of blood and tissue safety issues with national biovigilance data tools; (2) identification of public health issues that affect availability of blood, blood products, and tissues; (3) broad public health, ethical, and legal issues related to the safety of blood, blood products, and tissues; (4) the impact of various economic factors (*e.g.,* product cost and supply) on safety and availability of blood, blood products, and tissues; (5) risk communications related to blood transfusion and tissue transplantation; and (6) identification of infectious disease transmission issues for blood, organs, blood stem cells and tissues. The Committee has met regularly since its establishment in 1997. The Committee will meet on September 13, 2018 to receive presentations on material pertinent to exploring the topic of ''Defining a tolerable risk for infectious diseases from a patient's perspective.'' Historical aspects of combating infectious disease risks in the blood supply, ongoing national and global efforts towards mitigating those risks, and emerging considerations shall be presented to the Committee. The full Committee will receive an interim report from the ACBTSA Blood Sustainability subcommittee and additional topics that are pertinent to the mission of the Committee may be added to the agenda.

The public will have an opportunity to present their views to the Committee during public comment session scheduled for the meeting. Comments will be limited to five minutes per speaker and must be pertinent to the discussion. Pre-registration is required for participation in the public comment session. Any member of the public who would like to participate in this session is required to submit their name, email, and comment summary prior to close of business on September 7, 2018. If it is not possible to provide 30 copies of the material to be distributed at the meeting, then individuals are requested to provide a minimum of one (1) copy of the document(s) to be distributed prior to the close of business on September 7, 2018. It is also requested that any member of the public who wishes to provide comments to the Committee utilizing electronic data projection submit the necessary material to the Designated Federal Officer prior to the close of business on September 7, 2018.

Dated: August 9, 2018.

James J. Berger,

Senior Advisor for Blood and Tissue Policy.

[FR Doc. 2018–17617 Filed 8–15–18; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: National Vaccine Program Office, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services is hereby giving notice that a meeting is scheduled to be held for the National Vaccine Advisory Committee (NVAC). The meeting will be open to the public; public comment sessions will be held during the meeting.

DATES: The meeting will be held on September 12 and 13, 2018. The meeting times and agenda will be posted on the NVAC website at *http://www.hhs.gov/nvpo/nvac/meetings/index.html* as soon as they become available.

ADDRESSES: U.S. Department of Health and Human Services, Hubert H. Humphrey Building, Room 800, 200 Independence Avenue SW, Washington, DC 20201. The meeting can also be accessed through a live webcast on both days of the meeting. For more information, visit *http://www.hhs.gov/nvpo/nvac/meetings/index.html.*

Pre-registration is required for members of the public who wish to attend the meeting and who wish to participate in a public comment session. Individuals who wish to attend the meeting and/or participate in a public comment session should register at *http://www.hhs.gov/nvpo/nvac/meetings/index.html.* Participants may also register by emailing *nvpo@hhs.gov* or by calling (202) 690–5566 and providing their name, organization, and email address.

FOR FURTHER INFORMATION CONTACT: Ann Aikin, Acting Designated Federal Officer, National Vaccine Program Office, U.S. Department of Health and Human Services, Room 715H, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. Phone: (202) 690–5566; email: *nvac@hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The NVAC was established to provide advice and make recommendations to the Director of the National Vaccine Program on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program. During the September 2018 NVAC meeting, sessions will consist of presentations on valuing vaccines, including presentations on the role of vaccines in combatting antibiotic resistance; vaccine innovation, including presentations on financing, new technologies, and development of new vaccines; lessons from the field, with focus on Ebola and the new Shingles vaccine; and a session on HPV vaccination for cancer prevention. Please note that agenda items will be related to the charge of the Committee and are subject to change as priorities dictate. Information on the final meeting agenda will be posted prior to the meeting on the NVAC website: *http://www.hhs.gov/nvpo/nvac/index.html.*

Public attendance at the meeting is limited to the available space. Individuals who plan to attend in person and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the National Vaccine Program Office at the address/phone number listed above at least one week prior to the meeting. For those unable to attend in person, a live webcast will be available. More information on registration and accessing the webcast can be found at *http://www.hhs.gov/nvpo/nvac/meetings/index.html.*

Members of the public will have the opportunity to provide comments at the NVAC meeting during the public comment periods designated on the agenda. Public comments made during the meeting will be limited to three minutes per person to ensure time is allotted for all those wishing to speak. Individuals are also welcome to submit their written comments. Written comments should not exceed three pages in length. Individuals submitting written comments should email their comments to the National Vaccine Program Office (*nvpo@hhs.gov*) at least five business days prior to the meeting.

Dated: July 31, 2018.

Roula K. Sweis,

Chief of Management and Operations, National Vaccine Program Office.

[FR Doc. 2018–17618 Filed 8–15–18; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Planning Grant (R34).

Date: September 10, 2018.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Zhuqing (Charlie) Li, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room #3G41B, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC9823, Bethesda, MD 20892–9823, (240) 669–5068, *zhuqing.li@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 10, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–17676 Filed 8–15–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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 Advisory Dental and Craniofacial Research Council.

Date: September 13, 2018.

Open: 8:30 a.m. to 12:30 p.m.

Agenda: Report to the Director, NIDCR.

Place: National Institutes of Health Building 35, Room 620/630, 35 Convent Drive, Bethesda, MD 20892.

Closed: 1:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 35, Room 620/630, 35 Convent Drive, Bethesda, MD 20892.

Contact Person: Alicia J. Dombroski, Ph.D., Director, Division of Extramural Activities, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, 301–594–4805, *adombroski@nidcr.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 10, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–17679 Filed 8–15–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Analytical Services Center for Medications Development (8938).

Date: September 25, 2018.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 827–5702, *lf33c.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: August 10, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–17674 Filed 8–15–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; SEP for NIDA Medications Development.

Date: September 28, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Ivan K. Navarro, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, Room 4242, MSC 9550, Bethesda, MD 20892, 301–827–5833, *ivan.navarro@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: August 10, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–17677 Filed 8–15–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: September 5, 2018.

Closed: 9:00 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: 10:30 a.m. to 4:30 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative, and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Susan R.B. Weiss, Ph.D., Director, Division of Extramural Research, Office of the Director, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, NSC, Room 5274, MSC 9591, Rockville, MD 20892, 301–443–6487, *sweiss@nida.nih.gov*.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: August 10, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–17675 Filed 8–15–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2018–0040]

The President's National Infrastructure Advisory Council

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Committee management; notice of an open Federal Advisory Committee meeting.

SUMMARY: The President's National Infrastructure Advisory Council (NIAC) will meet Thursday, September 13, 2018, in Arlington, VA. This meeting will be open to the public.

DATES: The NIAC will meet on Thursday, September 13, 2018, 9:00 a.m.–12:00 p.m. Eastern Daylight Time (EDT). The meeting may close early if the committee has completed its business.

ADDRESSES: 1310 N. Courthouse Road, Arlington, VA 22201, Maryland Training Room. Members of the public will register at the registration table prior to entering the meeting room. For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact the person listed under **FOR FURTHER INFORMATION CONTACT** below as soon as possible.

Members of the public are invited to provide comments on issues to be considered by the NIAC mentioned in the supplementary information section.

Comments must be submitted in writing and received by the Department of Homeland Security no later than 12:00 p.m. on September 12, 2018, in order to be considered by the Council in its meeting. The comments must be identified by docket number DHS–2018–0040, and may be submitted by any *one* of the following methods:

• *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting written comments.

• *Email: NIAC@hq.dhs.gov.* Include docket number DHS–2018–0018 in the subject line of the message.

• *Fax:* (703) 235–9707, ATTN: Ginger Norris.

• *Mail:* Ginger Norris, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane SW, Mail Stop 0612, Washington, DC 20598–0607.

Instructions: All written submissions must include the words ''Department of Homeland Security'' and docket number DHS–2018–0040. Written comments will be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket or to read background documents or comments received by the NIAC, go to *www.regulations.gov.* Enter ''NIAC'' in the search line and the website will list all relevant documents for your review.

Members of the public will have an opportunity to provide oral comments on the topics on the meeting agenda below, and on any previous studies issued by the NIAC. We request that comments be limited to the issues and studies listed in the meeting agenda and previous NIAC studies. All previous NIAC studies can be located at *www.dhs.gov/NIAC.* Public comments may be submitted in writing or presented in person for the Council to consider. Written comments for discussion during the NIAC meeting must be received by 12:00 p.m. on Wednesday, September 12, 2018. Comments received after the deadline will be added to the subsuquent meeting minutes, if received before meeting minutes are finalized. In-person presentations will be limited to three minutes per speaker, with no more than 15 minutes for all speakers. Parties interested in making in-person comments should register on the Public Comment Registration list available at the entrance to the meeting location prior to the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Ginger Norris, NIAC Designated Federal Officer, Department of Homeland Security, 202–441–5885, *ginger.norris@hq.dhs.gov.* You may also consult the NIAC website, *www.dhs.gov/NIAC,* or contact the NIAC Secretariat by phone at (703) 235–2888 or by email at *NIAC@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix. The NIAC shall provide the President, through the Secretary of Homeland Security, with advice on the security and resilience of the Nation's critical infrastructure sectors. The NIAC will meet to discuss issues relevant to critical infrastructure security and resilience, as directed by the President. The Council will discuss future taskings and host a cross-sector panel discussion about various risks facing critical infrastructure. All slide presentations will be posted prior to the meeting on the Council's public web page, *www.dhs.gov/NIAC.*

Agenda

I. Opening of Meeting
II. Roll Call of Members
III. Opening Remarks and Introductions
IV. Approval of June 2018 Meeting Minutes
V. Catastrophic Power Outage Study Update
VI. Public Comment
VII. Discussion of New NIAC Business
VIII. Closing Remarks
IX. Adjournment

Deirdre Gallop-Anderson,

Alternate Designated Federal Officer for the National Infrastructure Advisory Council.

[FR Doc. 2018–17716 Filed 8–15–18; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2018–0041]

National Counter-Improvised Explosive Device Capabilities Analysis Database

AGENCY: Office of Infrastructure Protection (IP), National Protection and Programs Directorate (NPPD), Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments; new collection, 1670—NEW.

SUMMARY: DHS NPPD IP will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until October 15, 2018.

ADDRESSES: You may submit comments, identified by docket number DHS–2018–0041, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.

• *Email: JENNY.MARGAROS@HQ.DHS.GOV.* Please include docket number DHS–2018–0041 in the subject line of the message.

• *Mail:* Written comments and questions about this Information Collection Request should be forwarded to DHS/NPPD/IP, ATTN: 1670—NEW, 245 Murray Lane SW, Mail Stop 0612, Jenny Margaros, Arlington, VA 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jenny Margaros at 703–235–9381 or at *JENNY.MARGAROS@HQ.DHS.GOV.*

SUPPLEMENTARY INFORMATION: Under the Homeland Security Presidential Directive-19: Combating Terrorist Use of Explosives in the United States, DHS was mandated to have a regularly updated assessment of domestic explosives-related capabilities. It required DHS to expand its National Capabilities Analysis Database, which is now known as the National Counter-Improvised Explosive Device Capabilities Analysis Database (NCCAD). Currently, the President's Policy Directive-17: Countering Improvised Explosive Devices (PPD–17) reaffirms the 2007 Strategy for Combating Terrorist Use of Explosives in the United States. It provides guidance to update and gives momentum to our ability to counter threats involving improvised explosive devices (IEDs).

The NCCAD provides State, local, tribal and territorial law enforcement stakeholders a method to identify their level of capability to prevent, protect, mitigate, and respond to an IED threat. It also provides Federal stakeholders an overarching view of the Nation's collective counter-IED capabilities.

Information is collected by Office for Bombing Prevention (OBP) personnel and contractors. These individuals travel to locations across the Nation to gather the requisite information. OBP personnel and contractors facilitate initial baseline assessments either face-to-face or via webinar in order to get stakeholders familiar with the NCCAD system, provide clarifying information, and answer questions. Federal, State, local, tribal, and territorial law enforcement personnel with a counter-IED mission assist NCCAD personnel to coordinate a training location for personnel from the four disciplines (bomb squads, explosives detection canine, special weapons and tactics teams (SWAT), and dive units) to take their respective assessment. The OBP facilitator begins by conducting a short brief on the reasons for NCCAD and how it can help them as units.

The NCCAD assessments consists of a total of 56 tasks bundled into specific question sets spread across the four (4) disciplines representing specific tasks encompassing personnel, training, and equipment. The OBP and the NCCAD team used federal requirements (FEMA Resource Typing) to create the overarching list of questions in the question sets. Where there were no requirements, OBP and NCCAD worked with subject matter experts to identify best practices to create the assessments. Subject matter experts and Federal, State, local agency representatives collaborated to rank and stack each question and question set in order of importance and priority. At that time, weights were assigned to the questions, which provide the capability calculation for the whole question set.

The first group of questions in the assessment focus on the profile of the unit, *i.e.,* the number of technicians/handlers; primary assignment versus collateral duty assignment; number of IED responses in the past twelve (12) months; number of special events in the past twelve (12) months. The rest of question sets are delineated by task: Implement Intelligence/Information Gathering and Dissemination; Implement Bombing Incident Prevention and Response Plans; Incident Analysis; Incident Mitigation; Access Threat Area; Contain or Mitigate Hazards; Conduct Scene Investigations; and Maintain Readiness.

Each discipline's questionnaire only includes question sets specific to that discipline. This means that while multiple disciplines may have the same question set title, the questions may not be the same. For example, the SWAT and canine questionnaires both have the question set, Maintain Readiness, however, only the canine questionnaire includes specific questions about leashes, water bowls, and kennels, as equipment needed to maintain readiness. This tailoring allows for a large question pool, while ensuring specificity depending on the discipline being assessed.

The information from each individual unit is collected into the database. Upon completion of inputting the unit information, the program, using the appropriate algorithms, creates a capabilities analysis report for the unit commander. The report identifies current capabilities, existing gaps, and makes recommendations for closing those gaps. Additionally, the NCCAD allows the unit commander to identify the most efficient and effective purchases of resources to close those gaps. At the State, regional, and National-levels, the data is aggregated within the selected discipline and provides a snapshot of the counter-IED capabilities across the discipline. OBP also intends to identify the lowest, highest, median, and average capability levels across units, States, regions, disciplines, and the Nation. This data will be used to provide snapshots of the C–IED capabilities and gaps to inform decision-makers on policy decisions, resource allocation for capability enhancement, and crisis management. Data collected will be used in readiness planning, as well as steady-state and crisis decision support during threats or incidents. NCCAD data will assist operational decision-makers and resource providers in developing investment justifications that support State homeland security strategies and national priorities.

The National Incident Management System (NIMS) Resource Typing assessment is a subset of the NCCAD assessment questions which identify the number and type of bomb response teams that a unit has based on its composition. There are seven tasks with a total of 32 questions. Resource Typing Definitions are used to categorize, by capability, the resources requested, deployed, and used in incidents. Measurable standards identifying resource capabilities and performance levels serve as the basis for this categorization. National NIMS resource types support a common language for the mobilization of resources (equipment, teams, units, and personnel) prior to, during, and after major incidents. Resource users at all levels use these definitions as a consistent basis when identifying and inventorying their resources for capability estimation, planning and for mobilization during mutual aid efforts. National NIMS resource types represent the minimum criteria for the associated component and capability.

All responses are collected via electronic means via the virtual assessment program. While the actual data collection is done through the NCCAD database through IP Gateway, OBP personnel facilitate the collection of the data by assisting users via a face-to-face discussion or webinar. This is particularly useful for first time users to understand the nuances of the NCCAD system and how they can use their assessment to help justify resource requests and help with steady-state and threat-initiated decision-making. It is NCCAD policy to not accept the questionnaires in paper format. If there is a power outage at the event site or if the website is down due to technical reasons, facilitators have copies of the paper format for stakeholders to continue filling out. Facilitators do not collect these hard copies. Stakeholders keep them to update the electronic assessment when they next access it. OBP is cutting down this possibility even more by beginning the utilization of tablets and hotspots for those individuals who do not have laptops or internet access.

This is a new information collection.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: National Counter-Improvised Explosive Device Capabilities Analysis Database.

OMB Control Number: 1670—NEW.

Frequency: Annually.

Affected Public: State, Local, Tribal, and Territorial Governments.

Number of Respondents: 2,717.

Estimated Time per Respondent: 2 hours.

Total Burden Hours: 3,735 hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $0.

David Epperson,

Chief Information Officer.

[FR Doc. 2018–17717 Filed 8–15–18; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7005–N–14]

60-Day Notice of Proposed Information Collection: Owner's Certification With HUD Tenant Eligibility and Rent Procedures

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* October 15, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *colette.pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Lanier M. Hylton, Housing Program Manager, Office of Program Systems Management, Office of Multifamily Housing Programs, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 402–2510, (this is not a toll-free number) for copies of the proposed forms and other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Owner Certification with HUD's Tenant Eligibility and Rent Procedures.

OMB Approval Number: 2502–0204.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired. (OMB Expiration Date: June 30, 2018.)

Form Number: HUD–50059, HUD–50059–A, HUD–9887/9887–A, HUD–27061–H, HUD–90100, HUD–90101, HUD–90102, HUD–90103, HUD–90104, HUD–90105–a, HUD–90105–b, HUD–90105–c, HUD–90105–d, HUD–90106, HUD–91066, HUD–91067, HUD–90011, HUD–90012, Resident Rights and Responsibilities Brochure, EIV and You, and the HUD Fact Sheet For HUD Assisted Residents

Description of the Need for the Information and Proposed Use: The Department needs to collect this information in order to establish an applicant's eligibility for admittance to subsidized housing, specify which eligible applicants may be given priority over others, and prohibit racial discrimination in conjunction with selection of tenants and unit assignments. The Department must specify tenant eligibility requirements as well as how tenants' incomes, rents and assistance must be verified and computed so as to prevent the Department from making improper payments to owners on behalf of assisted tenants. The Department also must provide annual reports to Congress and the public on the race/ethnicity and gender composition of subsidy program beneficiaries. This information is essential to maintain a standard of fair practices in assigning tenants to HUD Multifamily properties.

Respondents (*i.e.,* affected public): Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal Government and State, Local or Tribal Government.

Estimated Number of Respondents: 2,170,713.

Estimated Number of Responses: 4,127,179.

Frequency of Response: 1.

Average Hours per Response: 2.58.

Total Estimated Burden: 1,536,684.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: July 25, 2018.

Vance T. Morris,

Special Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner, H.

[FR Doc. 2018–17672 Filed 8–15–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7005–N–13]

60-Day Notice of Proposed Information Collection: Multifamily Financial Management Template

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the

Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* October 15, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Harry Messner, Housing Program Manager, Office of Asset Management and Portfolio Oversight, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–2626. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Multifamily Financial Management Template.

OMB Approval Number: 2502–0551.

Type of Request: Reinstatement, without change, of previously approved collection expiring. (OMB Expiration Date: September 30, 2018).

Form Number: None.

Description of the Need for the Information and Proposed Use: Owners of certain HUD-insured and HUD-assisted properties are required to submit annual financial statements to HUD via the internet in the HUD-prescribed format and chart of accounts, and in accordance with the generally accepted accounting principles (GAAP). Most owners of multifamily housing (MFH) properties are required to submit annual financial statements to HUD. In accordance with the Department's Uniform Financial Reporting Standards (UFRS) regulation, 24 CFR part 5, owners of certain HUD-insured and HUD-assisted properties are required to submit annual financial statements electronically to HUD via the internet in the HUD-prescribed format and chart of accounts, and in accordance with the generally accepted accounting principles (GAAP). The Department uses this information to monitor the owner's compliance with regulatory requirements and to assess fiscal performance.

Respondents: Business or other for profit.

Estimated Number of Respondents: 26,995.

Estimated Number of Responses: 26,995.

Frequency of Response: Annually.

Average Hours per Response: 14.

Total Estimated Burden: 377,930.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: July 25, 2018.

Vance T. Morris,

Special Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner, H.

[FR Doc. 2018–17673 Filed 8–15–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2017–N155; FXES11140300000–189–FF03E00000]

Habitat Conservation Plan for the Interior Least Tern and Application To Renew Incidental Take Permit; Gibson County, Indiana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit application; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on an application to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The ESA requires that we invite public comment before issuing these permits.

DATES: We must receive any written comments on or before September 17, 2018.

ADDRESSES:

Submitting Comments: Send written comments by U.S. Mail to the Regional Director, Attn: Phil Delphey, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; or via email to *permitsR3ES@fws.gov.* Specify that your comments pertain to TE016724.

Obtaining Documents: For information on obtaining documents for review, see Public Comments.

FOR FURTHER INFORMATION CONTACT: Phil Delphey, 612–713–5318.

SUPPLEMENTARY INFORMATION:

Introduction

Section 9 of the ESA and our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17 prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the ESA as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532(19)). However, under limited circumstances, we issue permits to authorize incidental take, *i.e.,* take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

We invite public comment on permit renewal application TE016724, for certain activities with endangered species authorized by section

10(a)(2)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and our regulations governing the taking of endangered species in the Code of Federal Regulations (CFR) at 50 CFR 17. Submit your written data, comments, or request for a copy of the complete application and Habitat Conservation Plan (HCP) to either address shown in **ADDRESSES**.

Background

In 1986, a single pair of endangered Interior least terns (*Sterna antillarum*) nested at Cinergy Corporation's (Cinergy) Gibson Generating Station in Gibson County, Indiana. Since that time, the least tern colony at the facility has grown. During the 1990s, Cinergy worked cooperatively with the Indiana Department of Natural Resources (IDNR) and the Service to maintain favorable conditions for successful tern production at the Gibson Generating Station. Between 1986 and 1999, the largest number of terns recorded in a single year (1998) included an estimated 85 adult terns, 63 nests, and 72 fledged young. In the late 1990s, Cinergy worked cooperatively with the IDNR and the Service to develop a Habitat Conservation Plan (HCP) regarding continued operation of the facility, and, in late 1999, the Service issued an Incidental Take Permit (ITP) to Cinergy. In 2005, the ITP was renewed. Management of the facility under the HCP has promoted the continued growth of the tern colony. In 2010, an estimated 150 adults, 110 nests, and 165 fledged young were recorded. In addition to the growth in numbers, the tern colony has expanded to areas beyond the original location along a splitter dike adjacent to a cooling pond. Nesting has now been documented on the splitter dike, adjacent to ash ponds, a coal combustion waste landfill, construction areas, and station access roads. The expansion of the tern nesting area presents management challenges for the generating station and associated facilities.

Applicant's Proposal

Duke Power Company purchased and merged with Cinergy Corp. to form Duke Energy Corporation (Duke) in 2006. Duke has continued to operate the facility in accordance with the HCP and the ITP. Duke has applied to the Service for renewal of its ITP number TE016724. An HCP accompanies this renewal application. The HCP describes management activities in and around the Gibson Generating Station, including water management, predator control, and minimization of human disturbance due to recreational use.

Proactive management over the past 25 years has resulted in an increase in the Interior least tern population nesting at Gibson Generating Station and surrounding areas. However, no incidental take of least terns has occurred during that time. Actions that may result in take include human disturbance during management and operations, including foot traffic, vehicle or construction equipment, ash placement, waste disposal, and harassment due to the presence of people and equipment.

Duke proposes to continue to manage its property to protect least terns. In addition, Duke has committed to monitor the result of its activities and the effect on the population of least terns at Gibson Generating Station and the surrounding state and Federal lands.

Public Comments

We seek public review and comments on this permit application. Please refer to permit number TE016724 when you submit comments. The Habitat Conservation Plan, Incidental Take Permit renewal application, and NEPA determination are available for public inspection on the Midwest Region website at *http://www.fws.gov/midwest/endangered/permits/hcp/r3hcps.html.* In addition, the documents are available for public inspection by appointment during normal business hours (8 a.m. to 4:30 p.m.) at the U.S. Fish and Wildlife Service, Midwest Regional Office, 5600 American Blvd., West, 10th Floor, Bloomington, Minnesota 55437–1458, (612–713–5194) and at the U.S. Fish and Wildlife Service, Ecological Services Field Office, 620 South Walker Street, Bloomington, Indiana 47403 (812–334–4261).

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.305).

Dated: May 29, 2018.

Sean O. Marsan,

Acting Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2018–17664 Filed 8–15–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2018–N025; FXES11140800000–189–FF08EVEN00]

Receipt of Application Incidental Take Permit; Draft Low-Effect Habitat Conservation Plan for the Morro Shoulderband Snail; Phillips Single-Family Residence, Community of Los Osos, San Luis Obispo County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Richard Phillips for an incidental take permit under the Endangered Species Act of 1973, as amended. The permit would authorize take of the federally endangered Morro shoulderband snail that would occur incidental to otherwise lawful activities associated with the construction and maintenance of a single-family residence and associated uses addressed in the draft low-effect habitat conservation plan prepared for the project. We invite public comment.

DATES: Written comments should be received on or before September 17, 2018.

ADDRESSES: *To obtain documents:* You may download a copy of the draft habitat conservation plan and draft low-effect screening form and environmental action statement at *http://www.fws.gov/ventura/,* or you may request copies of the documents by sending U.S. mail to our Ventura office, or by phone (see **FOR FURTHER INFORMATION CONTACT**).

To submit written comments: Please send us your written comments using one of the following methods:

• *U.S. mail:* Send your comments to: Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S.

Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

• *Facsimile:* Fax your comments to 805–644–3958.

FOR FURTHER INFORMATION CONTACT: Julie M. Vanderwier, Fish and Wildlife Biologist, 805–677–3400 (phone), or at the Ventura address in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: We have received an application for an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). The application addresses take of the federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) that would occur incidental to the construction and maintenance of a single-family residence and associated uses. The requested permit term is 10 years and the permit would be subject to renewal. Issuance of an ITP pursuant to this habitat conservation plan (HCP) has been determined to be eligible for a categorical exclusion under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). We invite comments from the public on the draft HCP, draft low-effect screening form, and environmental action statement.

Background

The Morro shoulderband snail was listed as endangered on December 15, 1994 (59 FR 64613). Section 9 of the ESA and its implementing regulations prohibit the take of fish or wildlife species listed as endangered or threatened. Under the ESA, ''take'' is defined to include the following activities: ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532). Under section 10(a)(1)(B) of the ESA, we may issue permits to authorize take of listed species if it is incidental to other lawful activities and not the purpose of carrying out that activity. The Code of Federal Regulations provides regulations governing incidental take permits for endangered and threatened species at 50 CFR 17.22 and 17.32, respectively. Issuance of an ITP must not jeopardize the existence of any federally listed fish, wildlife or plant species. Under the ESA, protections for federally listed plants differ from the protections afforded to federally listed animals. The permittee would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)) for species included in the ITP.

Applicant's Proposed Activities

The proposed project involves the construction and maintenance of a single-family residence and associated uses on an existing, legal, one acre parcel in the unincorporated community of Los Osos, County of San Luis Obispo, California. The take would occur in association with site preparation activities necessary for construction. The HCP includes minimization measures for the covered species and compensation for unavoidable take of the species through payment of a fee to an Impact-Directed Environmental Account held by the National Fish and Wildlife Foundation. Collected fees from this account will fund recovery actions for Morro shoulderband snail identified in the 1998 recovery plan for this species and four plant species from western San Luis Obispo County. The HCP supports an application to the Service seeking issuance of an ITP that would authorize take of the Morro shoulderband snail. The County of San Luis Obispo requires demonstration that property owners are in compliance with the ESA regarding Morro shoulderband snail as part of their issuance of County permits that would allow land development in Los Osos.

Our Preliminary Determination

The Service has made a preliminary determination that issuance of the ITP is neither a major Federal action that will significantly affect the quality of the human environment within the meaning of section 102(2)(C) of NEPA (42 U.S.C. 4321 *et seq.,*) nor that it will, individually or cumulatively, have more than a negligible effect on Morro shoulderband snail, the only species covered in the HCP. Therefore, the permit qualifies for a categorical exclusion under NEPA.

Public Comments

If you wish to comment on the draft HCP and associated documents, you may submit comments by one of the methods in **ADDRESSES**.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: August 10, 2018.

Stephen P. Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2018–17663 Filed 8–15–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2018–N076; FXES11140100000–189–FF01E00000]

Habitat Conservation Plan for the Yelm Subspecies of the Mazama Pocket Gopher, Thurston County, Washington

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), received an application from Mr. Todd Tveten for an incidental take permit (ITP) pursuant to the Endangered Species Act of 1973, as amended (ESA). The ITP would authorize ''take'' of the Yelm pocket gopher, incidental to otherwise lawful activities during construction of a single-family home and agricultural shop in Thurston County, Washington. The application includes a habitat conservation plan (HCP) with measures to minimize and mitigate the impacts of the taking on the covered species. We have also prepared a draft environmental action statement (EAS) for our preliminary determination that the HCP and permit decision may be eligible for categorical exclusion under the National Environmental Policy Act. We provide this notice to open a public comment period and invite comments from all interested parties regarding the documents.

DATES: To ensure consideration, please submit written comments by September 17, 2018.

ADDRESSES: To request further information or submit written comments, please use one of the following methods:

• *Internet:* You may view or download copies of the HCP and obtain additional information on the internet at *http://www.fws.gov/wafwo/.*

• *Email: wfwocomments@fws.gov.* Include ''Tveten HCP'' in the subject line of the message.

• *U.S. Mail:* Public Comments Processing, Attn: FWS–R1–ES–2018–N076; U.S. Fish and Wildlife Service; Washington Fish and Wildlife Office; 510 Desmond Drive SE, Suite 102; Lacey, WA 98503.

• *In-Person Drop-off, Viewing, or Pickup:* Call 360–753–5823 to make an appointment (necessary for viewing or picking up documents only) during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Tim Romanski, Conservation Planning and Hydropower Branch Manager, Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES**), telephone: 360–753–5823. If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: The Service received an application for an ITP pursuant to Section 10(a)(1)(B) of the ESA. The applicant requests a 3-year permit term that would authorize ''take'' of the threatened Yelm pocket gopher (*Thomomys mazama yelmensis*), hereafter referred to as Yelm pocket gopher, incidental to construction of one single-family home on land the applicant owns in Thurston County, Washington. The application includes a HCP that describes actions the applicant will take to minimize and mitigate the impacts of the taking on the covered species.

Background

Section 9 of the Endangered Species Act (ESA; 16 U.S.C. 1531) prohibits ''take'' of fish and wildlife species listed as endangered or threatened. Under the ESA, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term ''harm,'' as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term ''harass'' is defined in our regulations as to intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

Section 10(a)(1)(B) of the ESA contains provisions that authorize the Service to issue permits to non-Federal entities for the take of endangered and threatened species caused by otherwise lawful activities, provided the following criteria are met: (1) The taking will be incidental; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking; (3) the applicant will ensure that adequate funding for the plan will be provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) the applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the plan. Regulations governing permits for endangered and threatened species are found in 50 CFR 17.22 and 17.32, respectively.

Proposed Action

The Service proposes to issue the requested 3-year ITP based on the applicant's commitment to implement the HCP, if permit issuance criteria are met. Covered activities include construction of a single-family home and an agricultural building. The area covered under the HCP consists of an approximately one-half acre project development site and an approximately one acre conservation site on land owned by the applicant. Take of the Yelm pocket gopher would occur within the half-acre development site and will be offset by granting Thurston County a perpetual conservation easement over an acre of occupied habitat, for the purpose of ensuring that it is perpetually managed for the benefit of the covered species. Funding for management of the conservation easement would be assured. The applicant may have the conservation easement released in the future if it purchases credits from a Service-approved conservation bank for the Yelm pocket gopher, which would provide equivalent or greater conservation benefits to the species. At present, no such conservation bank exists.

Public Comments

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We specifically request information, views, and suggestions from interested parties regarding our proposed Federal action, including adequacy of the HCP pursuant to the requirements for permits at 50 CFR parts 13 and 17 and adequacy of the EAS pursuant to NEPA.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive will be available for public inspection by appointment, during normal business hours, at our Washington Fish and Wildlife Office (see **ADDRESSES**).

Authority

We provide this notice in accordance with the requirements of section 10 of the ESA and NEPA and their implementing regulations (50 CFR 17.32 and 40 CFR 1506.6, respectively).

Theresa E. Rabot,

Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2018–17668 Filed 8–15–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2018–N055; FXES11130800000–189–FF08EVEN00]

Low-Effect Habitat Conservation Plan and Categorical Exclusion; Gaver Ranch, Castroville, Monterey County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from Midnight Sun, Inc., for a 20-year incidental take permit under the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for ''take'' of the federally threatened California red-legged frog and California tiger salamander that is likely to occur incidental to ongoing agricultural activities, flood and erosion control activities, and habitat restoration at Gaver Ranch near the community of Castroville in unincorporated Monterey County, California. We invite comments from the public on the application package, which includes a low-effect habitat conservation plan.

DATES: To ensure consideration, please send your written comments by September 17, 2018.

ADDRESSES:

Document availability: You may download a copy of the habitat conservation plan, draft environmental action statement and low-effect screening form, and related documents on the internet at *http://www.fws.gov/ventura/,* or you may request copies of the documents by U.S. mail to our Ventura office (see address below) or by phone (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: Please address written comments to Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. You alternatively may send comments by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Chad Mitcham, Fish and Wildlife Biologist, (805) 677–3328.

SUPPLEMENTARY INFORMATION: We have received an application from Midnight Sun, Inc., for a 20-year incidental take permit under the Act. The application addresses the potential for ''take'' of the federally threatened California red-legged frog (*Rana draytonii*) and California tiger salamander (*Ambystoma californiense*) likely to occur incidental to ongoing agricultural activities, flood and erosion control activities, and habitat restoration at Gaver Ranch, 15740 Blackie Road (Assessor Parcel Numbers (APNs): 133–012–001 and 133–012–007), near Castroville in unincorporated Monterey County, California. We invite comments from the public on the application package, which includes a low-effect habitat conservation plan. This proposed action has been determined to be eligible for a categorical exclusion under the National Environmental Policy Act of 1969 (NEPA), as amended.

Background

The U.S. Fish and Wildlife Service (Service) added the California red-legged frog to the List of Endangered and Threatened Wildlife (''listed'') as threatened on May 23, 1996 (61 FR 25813), and the Service listed the California tiger salamander in central California as threatened on August 4, 2004 (69 FR 47212). This list is found in title 50 of the Code of Federal Regulations at 50 CFR 17.11. Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the take of fish or wildlife species listed as endangered or threatened. ''Take'' is defined under the Act to include the following activities: ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532); however, under section 10(a)(1)(B) of the Act, we may issue permits to authorize incidental take of listed species. The Act defines ''incidental take'' as take that is not the purpose of carrying out an otherwise lawful activity.

Regulations governing incidental take permits for threatened and endangered species are provided at 50 CFR 17.32 and 17.22, respectively. Issuance of an incidental take permit and actions undertaken through implementation of the habitat conservation plan (HCP) must not jeopardize the existence of federally listed fish, wildlife, or plant species. All species covered by an incidental take permit receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)). In addition, the Service has issued regulations for these species under section 4(d) of the Act. These regulations state that incidental take as the result of routine ranching activities will not be a violation of the take provisions of section 9 of the Act. The section 4(d) regulations for the California tiger salamander are located at 50 CFR 17.43(c) and for the California red-legged frog at 50 CFR 17.43(d).

Applicant's Proposal

Midnight Sun Inc. (hereafter, the applicant), has submitted a low-effect HCP in support of their application for an incidental take permit (ITP) to address take of the California red-legged frog and California tiger salamander that is likely to occur as the result of direct impacts on up to 9.5 acres of suitable habitat occupied by the species. Take would be associated with ongoing agricultural activities, flood and erosion control activities, and habitat restoration on two existing parcels legally described as APNs: 133–012–001 and 133–012–007. Ultimately, the project intends to improve drainage infrastructure to avoid on- and offsite flooding that has been occurring since 2011. The current site address is 15740 Blackie Road near Castroville in unincorporated Monterey County, California. This property is outside the critical habitat designations for these species as set forth in 50 CFR 17.95(d).

The applicant is requesting a permit for take of the California red-legged frog and California tiger salamander that would result from ''covered activities'' that are related to ongoing agricultural operations. A 20-year ITP is requested to authorize take that would occur incidental to the proposed project. The applicant proposes to avoid, minimize, and mitigate impacts to the California red-legged frog and California tiger salamander associated with the covered activities by fully implementing the HCP. The following measures will be implemented:

(1) A qualified biologist will conduct an education program for all persons employed or otherwise working in the project area. The program will cover species identification and ecology, legal protections afforded the species, and species-specific conservation measures. The education program will be attended by all onsite construction personnel, and those personnel will be directed to cease work and immediately contact a biologist permitted to capture and relocate the subject species if any are observed in an area to be impacted.

(2) Each day prior to work beginning, a designated biologist or biological monitor will inspect the work area for the covered species. If an individual of the covered species is found in an area to be impacted, all work in that area will cease and a Service-approved biologist immediately notified. Work will cease until the individual moves from the area on its own accord or until the Service-approved biologist captures and relocates the individual to the nearest suitable habitat not affected by project activities.

(3) To the maximum extent practicable, construction activities will be limited to daylight hours.

(4) The applicant will not use erosion control materials that contain monofilament netting or similar material that can result in the entanglement of the covered species and other wildlife.

(5) Soil stockpiles will be fully stabilized to prevent erodible materials entering the covered species' aquatic habitats.

(6) Onsite restoration and management of 8.9 acres of upland and dispersal habitat will occur in order for the covered species to continue to utilize the project site.

(7) Permanent protection of 1.5 acres of habitat for the California red-legged frog and California tiger salamander will be ensured through the purchase of multispecies credits at the Sparling Ranch Conservation Bank in San Benito County, California. The applicant will fund up to $1,556,976 to ensure implementation of all minimization measures, monitoring, and reporting requirements identified in the HCP.

In the proposed HCP, the applicant considers two alternatives to the proposed action: ''No Action'' and ''Redesigned Project.'' Under the ''No Action'' alternative, an ITP for the proposed project would not be issued. The proposed conservation strategy consisting of onsite management of 8.9 acres of upland and dispersal habitat and the purchase of conservation credits would not be provided to effect recovery actions for the impacted species. The ''No Action'' alternative would not result in needed improvements to reduce the risk of on- and offsite flooding and would not result in benefits for the covered species; therefore, the applicant has rejected the ''No Action'' alternative. Under the ''Redesigned Project'' alternative, the applicant would further reduce the area of the proposed project to the smallest possible footprint; however, the Redesigned Project would not realistically accomplish the project goal of the reduction of on- and offsite flooding risk. Under this alternative, the applicant would not achieve the desired goal of reduced flooding risk, and fewer conservation credits would be purchased to effect recovery; therefore, the applicant has also rejected the ''Redesigned Project'' alternative.

Our Preliminary Determination

The Service has made a preliminary determination that issuance of the incidental take permit is neither a major Federal action that will significantly affect the quality of the human environment within the meaning of section 102(2)(C) of NEPA (42 U.S.C. 4321 *et seq.*) nor that it will, individually or cumulatively, have more than a negligible effect on the California red-legged frog and California tiger salamander. Therefore, in accordance with this preliminary determination, the permit qualifies for a categorical exclusion under NEPA.

Next Steps

We will evaluate the permit application, including the plan and comments we receive, to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. We will also evaluate whether issuance of the ITP would comply with section 7(a)(2) of the Act by conducting an intra-Service section 7 consultation.

Public Review

We provide this notice under section 10(c) of the Act and the National Environmental Policy Act of 1969, as amended, and NEPA's public involvement regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6). We are requesting comments on our determination that the applicant's proposal will have a minor or negligible effect on the California red-legged frog and California tiger salamander, and that the plan qualifies as a low-effect HCP as defined by our Habitat Conservation Planning Handbook. We will evaluate the permit application, including the plan and comments we receive, to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. We will use the results of our internal Service consultation, in combination with the above findings, in our final analysis to determine whether to issue the permit. If the requirements are met, we will issue an ITP to the applicant for the incidental take of California red-legged frog and California tiger salamander. We will make the final permit decision no sooner than 30 days after the date of this notice.

Public Comments

If you wish to comment on the permit application, HCP, and associated documents, you may submit comments by one of the methods described in **ADDRESSES**.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: August 10 2018.

Stephen P. Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2018–17669 Filed 8–15–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–26141; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before July 27, 2018, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by August 31, 2018.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before July 27, 2018. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State Historic Preservation Officers:

ALABAMA

Baldwin County

American Legion Post 199, 700 S Mobile St., Fairhope, SG100002858

INDIANA

Carroll County

American House Hotel, 205 Michigan Rd., Burlington, SG100002859

Elkhart County

Selmer, H. & A., Inc. Factory, 1119 N Main St., Elkhart, SG100002860

Grant County

Marion PCC & St. Louis Railroad Depot, 1002 S Washington St., Marion, SG100002861

Howard County

Greentown Commercial Historic District, 1/2 blk. on either side of Meridian St. between Walnut and Grant, Greentown, SG100002862

Madison County

Anderson High School Wigwam, 1229 Lincoln St., Anderson, SG100002863

Marshall County

Arnold, Isaac and Ruth, House, 1003 N Main St., Bourbon, SG100002864

Rush County

Mount Pleasant Beech Church and Beech Cemetery, E side of Cty. Rd. 725 W between Cty. Rds. 1000 N & 1100 N, Carthage vicinity, SG100002865

Sullivan County

Sullivan Courthouse Square Historic District, Roughly bounded by Section, Wall, State & Harris Sts., Sullivan, SG100002867

Wayne County

Dublin Friends Meeting House, 2352 W Maple St., Dublin, SG100002868

Fountain City Historic District, Roughly bounded by Noland's Fork, North, Hartley & Vine Sts., Fountain City, SG100002869

MICHIGAN

Calhoun County

Old-Merchants National Bank and Trust Co. Building, 25 W Michigan Ave., Battle Creek, SG100002887

OHIO

Cuyahoga County

Astrup Company Building, The, 2397 W 25th St., Cleveland, SG100002875

Darke County

Knights of Pythias Hall, 118 E Washington St., New Madison, SG100002876

Franklin County

Hartman Hotel, 275 S 4th & 150 E Main Sts., Columbus, SG100002877

Hamilton County

Provident Savings Bank and Trust Co., 630–632 Vine St., Cincinnati, SG100002878

Hancock County

Boss Manufacturing Company, The, 317 W Main Cross St., Findlay, SG100002879

Stark County

Lavin, Carl and Audrey, House, 5240 Plain Center Ave. NE, Canton, SG100002880

Summit County

Cuyahoga Falls Downtown Historic District, 111–245 Portage Trail, 138 Stowe Ave., 2035 Oldetown Loop, 2091–2250 Front, 2044–2220 2nd & 2055–2253 3rd Sts., Cuyahoga Falls, SG100002881

OKLAHOMA

Caddo County

Rock Island Passenger Station, 301 E Main St., Anadarko, SG100002874

Cleveland County

Southridge Addition Historic District, Roughly bounded by Classen Blvd., Oklahoma & S Ponca Aves., E Boyd, Macy & Okmulgee Sts., Norman, SG100002882

VIRGINIA

Alexandria Independent City

Oakland Baptist Cemetery, 4195 W Braddock Rd., Alexandria, SG100002883

Petersburg Independent City

Halifax Triangle and Downtown Commercial Historic District, Generally bounded by Washington, Adams, Sycamore, Halifax, Byrne & Harrison Sts., Petersburg, SG100002886

WISCONSIN

Sheboygan County

Badger State Tanning Company, 1031 Maryland Ave., Sheboygan, SG100002888

A request for removal has been made for the following resource:

OKLAHOMA

Cleveland County

DeBarr Historic District,
Roughly bounded by Boyd St., DeBarr Ave., Duffy St. and the A T & S F RR tracks Norman, OT91001904

A request to move has been received for the following resource:

VIRGINIA

Charlottesville Independent City

Wyndhurst (Charlottesville MRA), 605 Preston Pl., Charlottesville, MV82001816

Authority: Section 60.13 of 36 CFR part 60.

Dated: July 27, 2018.

Julie H. Ernstein,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program and Deputy Keeper of the National Register of Historic Places.

[FR Doc. 2018–17665 Filed 8–15–18; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1127]

Certain Microperforated Packaging Containing Fresh Produce (II); Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 12, 2018, under section 337 of the Tariff Act of 1930, as amended, on behalf of Windham Packaging, LLC of Windham, New Hampshire. A letter supplementing the complaint was filed on August 2, 2018. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain microperforated packaging containing fresh produce (II) by reason of infringement of certain claims of U.S. Patent No. 7,083,837 (''the '837 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at *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.*

FOR FURTHER INFORMATION CONTACT: Katherine Hiner. The Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2018).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 9, 2018, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–6, 11, and 13 of the '837 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''bags for fresh produce and bags containing fresh produce. The bags contain microperforations that are specifically designed and arranged to increase the shelf-life of fresh produce by affecting the mixture of gases within the bag'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Windham Packaging, LLC, 18 Wilson Rd, Windham, NH 03087.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Growers Express, LLC, 150 Main St., Suite 210, Salinas, CA 93901.

C.H. Robinson Worldwide, Inc., 14701 Charlson Road, Eden Prairie, MN 55347.

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 13, 2018.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2018–17686 Filed 8–15–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Extension of Public Comment Period for Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On May 16, 2018, the Department of Justice (DOJ) lodged a proposed consent decree with the United States District Court for the Southern District of Georgia in the lawsuit entitled *United States* v. *Hercules LLC,* Civil Action No. 2:18–cv–00062–LGW–RSB. To allow for additional community input and feedback, DOJ is extending the public comment period for an additional thirty (30) days.

The proposed consent decree would require defendant Hercules LLC to implement the interim remedy selected by the U.S. Environmental Protection Agency (EPA) for the outfall, known as Operable Unit 1, of the Terry Creek Dredge Spoil Areas/Hercules Outfall Site (''Site'') in Brunswick, in Glynn County, Georgia. The consent decree would also require the defendant to reimburse EPA $153,009.48 in past response costs at the Site, and to pay future response costs incurred by the United States in connection with this consent decree. Notice of the lodging of the decree was originally published in the **Federal Register** on May 23, 2018. See 83 FR 23937 (May 23, 2018). The publication of the original notice opened a thirty (30) day period for public comment on the Decree. At the request of some members of the public, the comment period was then extended by 60 days, to August 21, 2018. See 83 FR 27799 (June 14, 2018). The publication of the present notice extends the period for public comment on the Decree to September 20, 2018.

Comments concerning the consent decree should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Hercules, LLC,* D.J. Ref. No. 90–11–3–11685. All comments must be submitted no later than September 20, 2018. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $146.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $17.25.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–17680 Filed 8–15–18; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On August 10, 2018, the Department of Justice lodged a proposed consent decree with the United States District Court for the Southern District of Illinois in the lawsuit entitled *United States and Illinois* v. *WRB Refining LP, et al.,* Civil Action No. 3:18–cv–01484.

In the complaint filed contemporaneously with the proposed consent decree, the United States and Illinois alleged that defendants WRB Refining LP and Phillips 66 Company (''WRB/P66'') violated various provisions of the Clean Air Act and the Illinois Environmental Protection Act at a refinery owned and operated by defendants in Roxana and Hartford, Illinois (''Wood River Refinery''). The complaint sought injunctive relief and civil penalties. Under the proposed consent decree, WRB/P66 will implement a flare minimization and flare efficiency program to reduce emissions of volatile organic compounds; undertake a variety to practices to reduce pollution from valves and pumps; limit benzene emissions from wastewater management units; and develop and implement an operation and maintenance plan to improve the operation of the continuous emissions monitoring systems at the Wood River Refinery. As mitigation for past excess emissions, WRB/P66, among other things, will install a new vacuum truck unloading facility; set up monitoring devices around its wastewater treatment plant; and use low emissions valves when it has to replace older valves or install new ones. WRB/P66 will also implement a $500,000 supplemental environmental project to abate lead paint hazards at qualifying homes and buildings and pay a civil penalty of $475,000.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and Illinois* v. *WRB Refining LP, et al.,* D.J. Ref. No. 90–5–2–1–06722/6. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $56.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–17637 Filed 8–15–18; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–055]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is proposing to request an extension of an approved information collection, Independent Researcher Listing Application, NA Form 14115, used by independent researchers to provide their contact information. We invite you to comment on this proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: We must receive written comments on or before October 15, 2018.

ADDRESSES: Send comments to Paperwork Reduction Act Comments (MP), Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, fax them to 301.713.7409, or email them to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Tamee Fechhelm by telephone at 301.837.1694 or fax at 301.837.7409 with requests for additional information or copies of the proposed information collections and supporting statements.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for NARA to properly perform its functions; (b) NARA's estimate of the burden of the proposed information collection and its accuracy; (c) ways NARA could enhance the quality, utility, and clarity of the information it collects; (d) ways NARA could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether the collection affects small businesses. We will summarize any comments you submit and include the summary in our request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA solicits comments concerning the following information collection:

Title: Independent Researcher Listing Application.

OMB number: 3095–0054.

Agency form numbers: NA Form 14115.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 458.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 76.

Abstract: In the past, the National Archives has made use of various lists of independent researchers who perform freelance research for hire in the Washington, DC, area. We have sent these lists upon request to researchers who could not travel to the metropolitan area to conduct their own research. To better accommodate both the public and NARA staff, the Customer Services Division (RD–DC) of the National Archives maintains a listing of independent researchers for the public. All interested independent researchers provide their contact information via this form. Collecting contact and other key information from each independent researcher and providing such information to the public when deemed appropriate will only increase business. This form is not a burden in any way to any independent researcher who voluntarily submits a completed form. Inclusion on the list will not be viewed or advertised as an endorsement by the National Archives and Records Administration (NARA). The listing is compiled and disseminated as a service to the public.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2018–17644 Filed 8–15–18; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–056]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records they no longer need to conduct agency business. NARA invites public comments on such records schedules.

DATES: NARA must receive requests for copies in writing by September 17, 2018. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA); 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: NARA publishes notice in the **Federal Register** for records schedules they no longer need to conduct agency business. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Agriculture, Forest Service (DAA–0095–2018–0013, 1 item, 1 temporary item). General correspondence and reports used in the coordination of rural development program projects.

2. Department of Agriculture, Forest Service (DAA–0095–2018–0032, 1 item, 1 temporary item). Reports that track correspondence of general information inquiries.

3. Department of Agriculture, Forest Service (DAA–0095–2018–0036, 1 item, 1 temporary item). General correspondence, policy, and procedures related to recreation and related resource management.

4. Department of Agriculture, Forest Service (DAA–0095–2018–0037, 1 item, 1 temporary item). General correspondence, policy, reports, and procedures of the procurement program.

5. Department of Agriculture, Forest Service (DAA–0095–2018–0092, 1 item, 1 temporary item). General correspondence, reports, plans, and reviews of the inventory, monitoring, and assessment program.

6. Department of Defense, Defense Security Service (DAA–0446–2018–0003, 4 items, 4 temporary items). Records relating to Inspector General operations including investigations, general planning files, complaints, and oversight reports.

7. Department of Homeland Security, Department-wide (DAA–0563–2015–0006, 9 items, 8 temporary items). Records common to all Departmental offices including annual reports, standard operating procedures, administrative surveys, requests for information, internal dissemination lists, and administrative trip books. Proposed for permanent retention are operational survey records.

8. Department of Homeland Security, U.S. Secret Service (DAA–0087–2017–0004, 11 items, 6 temporary items). Records related to providing physical protection. Records include protection reports related to domestic and foreign trips, campaign and special events, and campaign protection administrative records. Proposed for permanent retention are records that document Presidential inaugurations, Presidential campaigns, and activities such as assassination attempts, successful assassinations, and events that required extraordinary protective measures.

9. Department of Justice, Office of Justice Programs (DAA–0423–2018–0004, 6 items, 5 temporary items). Records relating to civil rights compliance in agency assistance programs. Included are compliance case files, records of resolution monitoring, equal opportunity program reviews, enforcement actions, and correspondence regarding non-jurisdiction. Proposed for permanent retention are civil rights compliance review case files.

10. Department of Justice, Office of Justice Programs (DAA–0423–2018–0005, 2 items, 2 temporary items). Bureau of Justice Assistance claims and appeals case files of the Public Safety Officers' Benefits program.

11. Department of the Treasury, Internal Revenue Service (DAA–0058–2017–0003, 1 item, 1 temporary item). Records relating to tax return preparation training and certification.

12. Securities and Exchange Commission, Agency-wide (DAA–0266–2018–0009, 3 items, 3 temporary items). Records of tips, complaints, and referrals regarding alleged violations of securities laws. Included are related

administrative and program management files.

13. Securities and Exchange Commission, Division of Economic and Risk Analysis (DAA–0266–2018–0008, 11 items, 10 temporary items). Division program records for captured data, data oversight, trends analysis and risk assessment models, records supporting rulemaking and litigation, and research and outreach records. Proposed for permanent retention are taxonomies used in the data reporting system.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2018–17645 Filed 8–15–18; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Request: Proposed New Initiative: Accelerating Promising Practices for Small Libraries (APPS–L)

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice, request for comments on this collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

By this notice, IMLS is soliciting comments concerning a plan to offer a new grant initiative targeted to the needs of small libraries nationwide, aligned to the updated IMLS Strategic Framework for 2018–2022. ''Accelerating Promising Practice for Small Libraries (APPS–L)'' would be a special initiative of the National Leadership Grants for Libraries Program.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 12, 2018.

IMLS is particularly interested in comments that help the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

ADDRESSES: Send comments to: Dr. Sandra Webb, Director, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Webb can be reached by Telephone: 202–653–4718 Fax: 202–653–4608, or by email at *swebb@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

FOR FURTHER INFORMATION CONTACT: Kelcy Shepherd, Associate Deputy Director for Discretionary Programs, Office of Library Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. She can be reached by Telephone: 202–653–4716 Fax: 202–653–4608, or by email at *kshepherd@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

II. Current Actions

The goal of IMLS' ''Accelerating Promising Practice for Small Libraries (APPS–L)'' would be to support projects that strengthen the ability of small libraries to serve their community. This initiative would specifically support small libraries by funding relevant activities in specific topical areas that are clearly linked to an individual institution's broader community needs. IMLS ''Accelerating Promising Practice for Small Libraries (APPS–L) is being offered as a special initiative with funding from the National Leadership Grants for Libraries Program.

This action is to create the forms and instructions for the Notice of Funding Opportunity for the next three years.

Agency: Institute of Museum and Library Services.

Title: ''Accelerating Promising Practice for Small Libraries (APPS–L)'' Special Initiative.

OMB Number: 3137–TBD.

Frequency: Once a year.

Affected Public: Library staff.

Number of Respondents: 150.

Estimated Average Burden per Response: TBD.

Estimated Total Annual Burden: TBD.

Total Annualized Capital/Startup Costs: n/a.

Total Annual Costs: TBD.

Public Comments Invited: Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: August 10, 2018.

Kim Miller,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2018–17640 Filed 8–15–18; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 17, 2018. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address, 703–292–8030, or *ACApermits@nsf.gov*.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670 as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2019–003

1. *Applicant:* Caitlin Scarano, 60641 State Route 20, Marblemount, WA 98267.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas. The applicant, a writer supported by NSF's Antarctic Artists and Writers Program, would enter ASPAs 155, 157, and 158 to visit the Ross Island historic huts. The observations made during these visits will inform the applicant's writing about the Antarctic history, research, and daily life. The applicant would enter the huts with a trained guide and would abide by the management plans of all ASPAs visited. The applicant would not enter ASPA 121, Cape Royds, Ross Island. The results of this work are expected to be useful for outreach and education about Antarctica and the scientific research conducted there.

Location

ASPA 155, Cape Evans, Ross Island; ASPA 157, Backdoor Bay, Cape Royds, Ross Island; ASPA 158 Hut Point, Ross Island.

Dates of Permitted Activities

November 1–December 1, 2018.

Permit Application: 2019–004

2. *Applicant:* Brenda Hall, Climate Change Institute, University of Maine, Orono, ME 04469.

Activity for Which Permit Is Requested

Take, Import into USA. The applicant would collect samples of long-dead penguins and seals from islands in the vicinity of Pine Island Bay. The samples would be collected from beach sediments by shovel and would consist of small fragments of bone, skin, and eggshells. The samples would be imported in the United States for analysis. The applicant holds a marine mammal permit exemption letter from the National Marine Fisheries Service for the seal samples to document that the samples qualify as pre-Marine Mammal Protection Act specimens.

Location

Pine Island Bay, Antarctica.

Dates of Permitted Activities

January 15–April 1, 2019.

Permit Application: 2019–006

3. *Applicant:* Michelle LaRue, University of Minnesota, 116 Church Street SE, Minneapolis, MN 55455.

Activity for Which Permit Is Requested

Harmful Interference, Enter Antarctic Specially Protected Areas (ASPAs). Applicant would conduct aerial surveys over emperor penguin colonies at Beaufort Island, Franklin Island, Cape Washington, Coulman Island, Cape Crozier, and Cape Roget. Photographs of the colonies would be taken at an oblique angle at an altitude of approximately 500m from a helicopter or a fixed wing aircraft. The photographs would be used to assess the spatial extent of the colony, number of individual penguins, and habitat characteristics. The aerial surveys may involve flights over ASPAs 105, 124, and 173. The applicant would also enter ASPA 124, Cape Crozier, on foot, to photograph the emperor penguin colony if weather conditions do not allow for overflight.

Location

Ross Sea Region, Antarctica; ASPA 105, Beaufort Island; Franklin Island; ASPA 173, Cape Washington and Sliverfish Bay; Coulman Island; ASPA 124, Cape Crozier; Cape Roget.

Dates of Permitted Activities

October 15–November 30, 2018.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–17667 Filed 8–15–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

STEM Education Advisory Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: STEM Education Advisory Panel (#2624).

Date and Time: September 12, 2018; 8:00 a.m.–4:30 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue Alexandria, VA 22314.

To help facilitate your entry into the building, please contact Keaven Stevenson via email at *kstevens@nsf.gov* or by phone: 703.292.8663 on or prior to September 7, 2018.

Type of Meeting: Part-Open.

Contact Person: Keaven Stevenson, Directorate Administrative Coordinator, Room C 11044, National Science Foundation, 2415 Eisenhower Avenue Alexandria, VA 22314. Contact Information: 703–292–8663/*kstevens@nsf.gov*.

Purpose of Meeting: To provide advice and recommendations to the Committee on Science, Technology, Engineering, and Mathematics Education (CoSTEM) and for the Panel to identify priority areas for the next year.

Agenda: STEM Education Advisory Panel agenda attached. Please check the website for any additional updates prior to the meeting at *https://nsf.gov/ehr/STEMEdAdvisory.jsp*.

Reason for Closing: The panel will review and discuss a draft government report. This discussion must be kept confidential. These matters are exempt under 5 U.S.C. 552b(c), (9)(B) of the Government in the Sunshine Act.

Dated: August 13, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018–17689 Filed 8–15–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–8030; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On June 21, 2018, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on August 7, 2018 to:

1. Ron Naveen, Oceanites, Inc., Permit No. 2019–001

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–17666 Filed 8–15–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Astronomy and Astrophysics Advisory Committee (#13883).

Date and Time: September 20, 2018; 9:00 a.m.–5:00 p.m.

September 21, 2018, 9:00 a.m.–12:00 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, Room E 2030.

Type of Meeting: Open. Attendance information for the meeting will be forthcoming on the website: *https://www.nsf.gov/mps/ast/aaac.jsp*.

Contact Person: Dr. Christopher Davis, Program Director, Division of Astronomical Sciences, Suite W 9136, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–4910.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: August 13, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018–17690 Filed 8–15–18; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0213]

Information Collection: Requirements for Renewal of Operating Licenses for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants.''

DATES: Submit comments by September 17, 2018.

ADDRESSES: Submit comments directly to the OMB reviewer at: Matthew Oreska, Desk Officer, Office of Information and Regulatory Affairs (3150–0002), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–5555, email: *oira_submission@omb.eop.gov.*

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–2017–0213 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0213.
- *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 ''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 is available in ADAMS under Accession No. ML18130A736.
- *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 the 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

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, 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 comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment 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, title 10 of the Code of Federal Regulations (CFR) Part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants.'' 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 on April 13, 2018 (83 FR 16134).

1. *The title of the information collection:* 10 CFR part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants.''

2. *OMB approval number:* 3150–0155.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* There is a one-time application for any licensee wishing to renew the operating license for its nuclear power plant. There is a one-time requirement for each licensee with a renewed operating license to submit a letter documenting the completion of inspection and testing activities. All holders of renewed licenses must perform yearly record keeping.

6. *Who will be required or asked to respond:* Commercial nuclear power plant licensees who wish to renew their operating licenses and holders of renewed licenses.

7. *The estimated number of annual responses:* 66 (8 reporting responses + 58 recordkeepers).

8. *The estimated number of annual respondents:* 60.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 226,320 (168,320 hours reporting + 58,000 hours recordkeeping).

10. *Abstract:* Part 54 of 10 CFR establishes license renewal requirements for commercial nuclear power plants and describes the information that licensees must submit to the NRC when applying for a license renewal. The application must contain information on how the licensee will manage the detrimental effects of age-related degradation on certain plant systems, structures, and components so as to continue the plant's safe operation during the renewal term. The NRC needs this information to determine whether the licensee's actions will be effective in assuring the plants' continued safe operation during the period of extended operation. Holders of renewed licenses must retain in an auditable and retrievable form, for the term of the renewed operating license, all information and documentation required to document compliance with 10 CFR part 54. The NRC needs access to this information for continuing effective regulatory oversight.

Dated at Rockville, Maryland, this 10th day of August 2018.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2018–17613 Filed 8–15–18; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2017–231; CP2017–237; CP2017–240; CP2017–242; CP2017–248]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 20, 2018.

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 website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

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).:* CP2017–231; *Filing Title:* Notice of the United States Postal Service of Filing Modification Two to a Global Plus 1D Negotiated Service Agreement; *Filing Acceptance Date:* August 10, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* August 20, 2018.

2. *Docket No(s).:* CP2017–237; *Filing Title:* Notice of the United States Postal Service of Filing Modification Two to a Global Plus 1D Negotiated Service Agreement; *Filing Acceptance Date:* August 10, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* August 20, 2018.

3. *Docket No(s).:* CP2017–240; *Filing Title:* Notice of the United States Postal Service of Filing Modification Two to a Global Plus 1D Negotiated Service Agreement; *Filing Acceptance Date:* August 10, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Lawrence Fenster; *Comments Due:* August 20, 2018.

4. *Docket No(s).:* CP2017–242; *Filing Title:* Notice of the United States Postal Service of Filing Modification Three to a Global Plus 1D Negotiated Service Agreement; *Filing Acceptance Date:* August 10, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Lawrence Fenster; *Comments Due:* August 20, 2018.

5. *Docket No(s).:* CP2017–248; *Filing Title:* Notice of the United States Postal Service of Filing Modification Three to a Global Plus 1D Negotiated Service Agreement; *Filing Acceptance Date:* August 10, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Lawrence Fenster; *Comments Due:* August 20, 2018.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–17682 Filed 8–15–18; 8:45 am]

BILLING CODE 7710–FW–P

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Presidio Trust Act, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held commencing 4:30 p.m. on September 27, 2018, at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco, California.

The purposes of this meeting are: To provide the Board Chair's report; to provide the Chief Executive Officer's report; to receive presentations of concept proposals for development of the Fort Scott site; to receive public comment on the concept proposals for the Fort Scott site; to consider and potentially select which proposers will be invited to respond to a Request for Proposal for the Fort Scott site; and to receive public comment on other matters pertaining to Trust business.

Individuals requiring special accommodation at this meeting, such as needing a sign language interpreter, should contact Mollie Matull at 415.561.5300 prior to September 18, 2018.

DATES: The meeting will begin at 4:30 p.m. on September 27, 2018.

ADDRESSES: The meeting will be held at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco.

FOR FURTHER INFORMATION CONTACT: Nancy J. Koch, General Counsel, the Presidio Trust, 103 Montgomery Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: 415.561.5300.

Dated: August 9, 2018.

Nancy J. Koch,

General Counsel.

[FR Doc. 2018–17662 Filed 8–15–18; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83822; File No. SR–NYSEAMER–2018–37]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Section 140 and Section 142 of the NYSE American Company Guide To Eliminate the Initial Application Fee for SPACs Applying To List and Amend the Additional Shares Fee for Shares Issued in Conjunction With a Business Combination if the SPAC Remains Listed After Such Business Combination

August 10, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 31, 2018, NYSE American LLC (the ''Exchange'' or ''NYSE American'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 140 of the NYSE American Company Guide to provide that a company applying to list as a special purpose acquisition company (''SPAC'') under Section 119 of the Company Guide will not be required to pay an Initial Application Fee. The Exchange also proposes to amend Section 142 of the Company Guide to provide that a SPAC remaining listed after consummation of the Business Combination will not be required to pay listing fees in relation to the issuance of any additional shares (i) in connection with the consummation of the Business Combination; or (ii) in a transaction that occurs at the same time as the Business Combination with a closing contractually contingent on the consummation of the Business Combination. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 119 of the Company Guide provides for the listing of companies with no prior operating history (''SPACs'') that conduct an initial public offering for the purpose of engaging in a merger or acquisition with one or more unidentified companies within a specific period of time (not to exceed 36 months) (the ''Business Combination''). At least 90% of the gross proceeds of a SPAC's IPO and any concurrent sale by the company of equity securities must be deposited in a trust account maintained by an independent trustee, an escrow account maintained by an ''insured depository institution,'' as that term is defined in Section 3(c)(2) of the Federal Deposit Insurance Act, or in a separate bank account established by a registered broker or dealer (collectively, a ''deposit account'') pending completion of the Business Combination or dissolution of the SPAC. The Business Combination must have an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriter's fees and taxes payable on the income earned on the deposit account) at the time of the agreement. A listed SPAC may remain listed upon consummation of its Business Combination, provided it

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

meets the criteria for initial listing of an operating company.

Proposed Waiver of the Initial Application Fee for SPACs

Pursuant to Section 140 of the Company Guide, issuers applying for initial listing on the Exchange must (subject to enumerated exceptions) pay a $5,000 initial application fee (the ''Initial Application Fee''). The Initial Application Fee is deducted from the amount of initial listing fees payable by an applicant at the time of its initial listing. The Exchange proposes to amend Section 140 to provide that companies listed as SPACs under Section 119 of the Company Guide would not be charged the Initial Application Fee. SPACs applying to list almost always complete their offerings and the Exchange is therefore unlikely to incur unreimbursed costs in reviewing their applications, which was the concern the Exchange was addressing when it adopted the Initial Application Fee.

Proposed Waiver of Additional Listing Fees in Connection With SPAC Business Combinations

The Exchange has observed that a SPAC will frequently reconsider its listing venue in connection with the consummation of its Business Combination. The Business Combination is a transformative event in the life cycle of a SPAC, when it becomes an operating company instead of a blank check company. In connection with that transformation, a SPAC will frequently put in place a new management team and significantly change its board of directors and it will often have a significantly different shareholder base after the Business Combination than it had as a SPAC. In effect, a SPAC after its Business Combination is a completely different company and it is for this reason that the board and management of the company after the transaction would want to reconsider the positioning of the company in many respects, including its listing venue.

The market for the retention or transfer to another exchange of these companies is very competitive and a number of transfers to a new listing venue have occurred in connection with the completion of a SPAC's Business Combination. The listing rules of the Exchange,[4] the New York Stock Exchange [5] and NASDAQ Stock Market [6] all provide for a waiver of all initial listing fees in connection with a transfer from another national securities exchange, so a SPAC moving its listing upon consummation of its Business Combination does not pay any listing fees in connection with such transfer or the issuance of any new shares at the time of its Business Combination. However, pursuant to the provisions of Section 142 of the Company Guide, a SPAC remaining listed on the Exchange upon consummation of its Business Combination must pay additional listing fees in relation to any additional shares issued in connection with the Business Combination. In such a case, the SPAC would be faced with the anomalous situation where there would be no listing fee burden associated with a transfer to another exchange but it would be required to pay significant additional listing fees if it remained on its incumbent exchange. Consequently, to eliminate this disparate treatment of companies listing after a Business Combination, the Exchange proposes to amend Section 142 to provide that any SPAC remaining listed on the Exchange upon consummation of its Business Combination would no longer be subject to any additional listing fees with respect to any shares issued in connection with such Business Combination.

In addition, the Exchange has observed that it is not uncommon for a SPAC to raise capital by selling shares in a private placement in conjunction with the consummation of its Business Combination to fund its new business after the Business Combination. The private placement generally closes at the same time as the consummation of the Business Combination and the closing of the private placement is contractually conditioned on such consummation.

Under current Exchange rules, the SPAC would be required to pay listing fees with respect to the shares issued in any such private placement. By contrast, if the SPAC chose to transfer to another listing venue at the time of consummation of its Business Combination, the other market would charge no listing fees on those shares as they would be subject to the listing fee exemption, which all of the exchanges have, for shares outstanding at the time of transfer. As this anomaly would impose a cost on the SPAC if it remained on the Exchange where none would be incurred if the company chose to transfer, the Exchange proposes to amend Section 142 to provide that a SPAC that remains listed after consummation of its Business Combination would not be required to pay listing fees in relation to the issuance of any additional shares in a transaction that occurs at the same time as the Business Combination with a closing contractually contingent on the consummation of the Business Combination.[7]

The Exchange does not expect the revenues it forgoes as a result of the proposed amendments to Sections 140 and 142 to negatively affect its ability to conduct its regulatory program.

The Exchange also proposes to remove some text from Section 140 that is no longer applicable as it refers to the implantation of the Initial Application Fee as of January 1, 2013. Additionally, the Exchange proposes to amend Section 142 to remove text relating to fee rates that are no longer applicable as they expired by their terms on December 31, 2014.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) [9] and 6(b)(5) [10] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges and is not designed to permit unfair discrimination among its members and issuers and other persons using its facilities.

The proposed amendment to Section 140 is not unfairly discriminatory and represents an equitable allocation of reasonable fees, because SPACs applying to list almost always complete their offerings and the Exchange is therefore unlikely to incur unreimbursed costs in reviewing their applications, which was the concern the Exchange was addressing when it adopted the Initial Application Fee. In addition, the proposed amendment would represent an equitable allocation of reasonable fees as the Initial Listing Application Fee is offset against fees payable upon listing and almost all SPACs applying to list would benefit from this discount to their initial listing fees, while operating company

[4] *See* Section 140 of the NYSE American Company Guide.

[5] *See* Section 902.02 of the NYSE Listed Company Manual.

[6] *See* NASDAQ Marketplace Rule 5910(a)(7)(i).

[7] The Exchange believes that it is appropriate to provide this waiver to a SPAC at the time of its Business Combination and not to an operating company that would also be subject to additional listing fees in connection with a share issuance subsequent to listing. In the Exchange's experience, there is generally no parallel to the Business Combination in the life cycle of an operating company that would cause it to reconsider its listing venue at the time it issued additional shares, so the anomaly the Exchange seeks to address in relation to SPACs is not relevant to operating companies.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

applicants are much more likely not to complete the listing process.

The proposed amendment to Section 142 is not unfairly discriminatory and represents an equitable allocation of reasonable fees, as it will result in a SPAC that remains listed on the Exchange after its Business Combination being treated the same as a SPAC that transfers to the Exchange from another listing venue. The Exchange also believes the proposed amendment to Section 142 is not unfairly discriminatory and represents an equitable allocation of reasonable fees with respect to listed operating companies, as operating companies generally do not have an event in their life cycle parallel to the Business Combination for a SPAC which would normally give rise to a reconsideration of the company's listing venue.

The proposed removal of text relating to fees that are no longer applicable is ministerial in nature and has no substantive effect.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The proposed amendment to Section 140 does not impose and burden on competition as it merely will allow the Exchange to better compete with other exchanges for initial listing of SPACs. In addition, the proposed amendment to Section 142 does not impose any burden on competition, as it will have the effect of treating a SPAC that remains listed on the Exchange after its Business Combination the same for fee purposes as a SPAC that transfers to the Exchange from another listing venue or transfers to another listing venue at that time.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [11] of the Act and subparagraph (f)(2) of Rule 19b–4 [12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] 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–NYSEAMER–2018–37 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–NYSEAMER–2018–37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2018–37 and should be submitted on or before September 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

[FR Doc. 2018–17629 Filed 8–15–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83826; File No. SR–Phlx–2018–55]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Proposed Rule Change Relating to Anticipatory Hedging

August 10, 2018.

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 August 3, 2018, Nasdaq PHLX LLC (''Phlx'' 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 amend Rule 1064(d) related to Anticipatory Hedging.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 1064 entitled ''Crossing, Facilitation and Solicited Orders.'' Specifically, the Exchange proposes to amend 1064(d)(iii)(A) to add a specific eligibility size when transacting options on the Nasdaq 100® Index including options with nonstandard expiration dates [3] (''NDX'' and ''NDXP''). The Exchange also proposes to amend an incorrect cross-reference to Rule 1064 and replace certain references with a defined term.

Rule 1064(d) describes rules for anticipatory hedging on Phlx. The rule provides:

no member organization or person associated with a member or member organization who has knowledge of the material terms and conditions of a solicited order, an order being facilitated, or orders being crossed, the execution of which are imminent, shall enter, based on such knowledge, an order to buy or sell an option for the same underlying security; an order to buy or sell the security underlying such class; or an order to buy or sell any related instrument until (i) or (ii) occur: (i) the terms and conditions of the order and any changes in the terms of the order of which the member, member organization or person associated with a member or member organization has knowledge are disclosed to the trading crowd, or (ii) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. For purposes of this Rule, an order to buy or sell a ''related instrument'' means, in reference to an index option, an order to buy or sell securities comprising 10% or more of the component securities in the index or an order to buy or sell a futures contract on an economically equivalent index.

Among other conditions, Rule 1064(d)(iii) provides that it does not prohibit a member or member organization from buying or selling a stock, security futures or futures position following receipt of an option order, including a complex order, but prior to announcing such order to the trading crowd, provided that the option order is in a class designated as eligible for ''tied hedge'' transactions [4] as determined by the Exchange and is within the designated tied hedge eligibility size parameters, which parameters shall be determined by the Exchange and may not be smaller than 500 contracts per order (there shall be no aggregation of multiple orders to satisfy the size parameter).

When Phlx originally adopted the anticipatory hedge rule in 2001,[5] the Exchange believed that the prohibition on anticipatory hedging was necessary to prevent members and associated persons from using undisclosed non-public information about imminent solicited option transactions to trade the relevant option or any closely-related instrument in advance of persons represented in the relevant options crowd. The Exchange notes that the tied-hedge exception was designed to preserve the right to cross orders in advance of submitting a proposal to the trading crowd, while at the same time assuring that orders that are the subject of crossing are exposed to the auction market (trading crowd) in a meaningful way by prohibiting behavior such as anticipatory hedging.[6]

The Exchange notes that the primary purpose of the provision, ''not smaller than 500 contracts'' is to limit use of the tied hedge procedures to larger orders that might benefit from a member's or member organization's ability to execute a facilitating hedge.[7] When adopting the tied hedge exception the Exchange stated that it believes that, given the decreased amount of liquidity available at the NBBO, the frequency with which quotes may flicker, and differing costs associated with accessing liquidity on various markets, as well as for ease of administration, the proposed 500 contract minimum should be sufficient to address these considerations.[8]

The Exchange is proposing to add an exception to the eligibility size parameters for options on the Nasdaq 100® Index including options with nonstandard expiration dates (''NDX'' and ''NDXP'') which lowers the size eligibility for this index to not smaller than 50 contracts per order. The Exchange believes that this smaller order eligibility size is appropriate for NDX and NDXP because the index value for NDX and NDXP is high as compared to other securities instruments. An index has a multiplier of 100. The Exchange believes that lowering the eligibility size for NDX and NDXP from 500 to 50 contracts is appropriate because it would reduce the minimal notional value of the trade.

For example NDX, as of July 19, 2018, had an Index Level of 7,356 and factoring in the contract multiplyer of 100 provides a notional value of $735,600 as compared to PowerShares QQQ (''QQQ'') which had an equity value of 179.03 with a notional value of $17,903 (100 × underlying value) as of July 19, 2018. The premium value of NDX front month, at-the-money calls for August 17th midpoint was $130.35. Utilizing this value with 500 contracts would equate to a total premium for NDX of $6,517,500 and utilizing this value with 50 contracts would equate to a total premium for NDX of $651,750. By comparison, the premium value of QQQ front month, at-the-money calls for August 17th midpoint was $3.43. Utilizing this value with 500 contracts would equate to a total premium for QQQ of $171,500 and utilizing this value with 50 contracts would equate to a total premium for QQQ of $17,150. The example demonstrates the much larger size of NDX as compared to QQQ, a highly liquidity equity option. This example reflects the size comparison against a large broad based index and demonstrates the size of NDX.

The Exchange notes that this smaller size carve out for NDX is in line with the original intent of the selection of the size of the contracts, to limit use of the tied hedge procedures to larger orders that might benefit from a member's or member organization's ability to execute a facilitating hedge. The Exchange notes that a size of 50 contracts for NDX is still considered a large size order given the higher notional value.

The Exchange notes that it conducts certain surveillances in connection with anticipatory hedging. Specifically, the Exchange conducts an on-floor surveillance to ensure both the stock and option component parts of the trade were exposed in open outcry and there was a reasonable opportunity for the trading crowd to participant in the transaction. Further, post-trade surveillance is conducted with respect

[3] NDX represents A.M.-settled options on the Nasdaq 100® Index. NDXP represent P.M.-settled options on the Nasdaq 100® Index.

[4] A tied hedge transaction is described in Rule 1064(d)(iii)(C)–(H).

[5] *See* Securities Exchange Act Release No. 44740 (August 23, 2001), 66 FR 45721 (August 29, 2001) (SR–Phlx–2001–61).

[6] *See* Securities Exchange Act Release No. 61066 (November 25, 2009), 74 FR 63162 (December 2, 2009) (SR–Phlx–2009–98).

[7] *Id.*

[8] *Id.*

to anticipatory hedging rules. The Exchange notes that pursuant to Phlx Rule 1064(d)(iii)(G), prior to entering tied hedge orders on behalf of customers, the member or member organization must deliver to the customer a written notification informing the customer that his order may be executed using the Exchange's tied hedge procedures. The written notification must disclose the terms and conditions contained herein and be in a form approved by the Exchange. The Exchange notes that tied hedge transactions does not occur with great frequency on the Exchange's trading floor.

Amend Cross Reference and Define Term

The Exchange proposes to amend Rule 1066(f)(4) entitled ''Tied Hedge Order.'' Currently, the rule provides that a tied hedge order is an option order that is tied to a hedge transaction as defined in Commentary .04 to Rule 1064, following the receipt of an option order in a class determined by the Exchange as eligible for ''tied hedge'' transactions. The Exchange proposes to replace Commentary .04 to Rule 1064 within Rule 1066(f)(4) to reference Rule 1064(d)(iii) to correct the cross-reference.

The Exchange also proposes to replace legacy references to the Exchange's trading platform in Rule 1066, namely ''PHLX XL'' and ''PHLX XL II'' with the term ''System'' which was recently defined by the Exchange.[9]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] 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, by changing the size requirements to assist NDX and NDXP to meet the eligibility requirements for Rule 1064(d).

The Exchange's proposed amendment to Rule 1064(d) to permit lower size eligibility requirements for NDX and NDXP of not smaller than 50 contracts per order is consistent with the Act and the protection of investors and the public interest because this smaller order eligibility size is appropriate for NDX and NDXP. NDX is a broad based index that is designed to reflect the movement of a large segment of the market. Each of these options represents a notional value equal to 100 units of the index. NDX is a large-cap growth index with 105 components. As with other broad based indexes, NDX has a large notional value as compared to non-index options. The index value for NDX and NDXP is 6400. Based on the index multiplier of 100, an index option would equate to 640,000 in notional value, which is high. The Exchange believes that lowering the eligibility size for NDX and NDXP from 500 to 50 contracts is appropriate because it would reduce the notional value of one contract to 64,000 in notional value. The proposed rule would permit an eligibility size for NDX and NDXP that takes into account the notional value for this index. The Exchange believes that permitting the lower eligibility size for NDX and NDXP does not substantively amend the eligible order size, rather it provides a more appropriate mathematical equivalent.

The Exchange notes that this smaller size carve out for NDX is in line with the original intent of the selection of the size of the contracts, to limit use of the tied hedge procedures to larger orders that might benefit from a member's or member organization's ability to execute a facilitating hedge. The Exchange notes that a size of 50 contracts for NDX is still considered a large size order and in fact, in the case of NDX, a larger size than 500 contracts for an option contract.

Amend Cross Reference and Define Term

The Exchange's proposal to replace Commentary .04 to Rule 1064 with Rule 1064(d)(iii) to correct the cross-reference and replace ''PHLX XL'' and ''PHLX XL II'' with the term ''System'' are consistent with the Act because they will provide more clarity as to the Exchange's Rules. The Exchange also proposes to replace the words ''PHLX XL'' in the title of Phlx Rule 1066 with the newly defined term System. The term PHLX XL is the name of the Exchange's trading platform. The term ''System'' is intended to define the electronic trading platform.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed amendment to Rule 1064(d) to permit lower size eligibility requirements for NDX and NDXP will apply uniformly to all market participants. The Exchange notes that this smaller size carve out for NDX is in line with the original intent of the selection of the size of the contracts, to limit use of the tied hedge procedures to larger orders that might benefit from a member's or member organization's ability to execute a facilitating hedge. The Exchange's proposal to replace Commentary .04 to Rule 1064 with Rule 1064(d)(iii) to correct the cross-reference and replace ''PHLX XL'' and ''PHLX XL II'' with the term ''System'' are non-substantive rule changes. The Exchange does not believe that this will impact inter-market competition because the smaller eligibility size will permit NDX and NDXP to be available to market participants for a tied hedge similar to other competing index options.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (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–Phlx–2018–55 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.

[9] System is defined in Phlx Rule 1000(b)(45).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–Phlx–2018–55. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2018–55 and should be submitted on or before September 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–17633 Filed 8–15–18; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83829; File No. SR–NYSEAMER–2018–22]

Self-Regulatory Organizations; NYSE American LLC; Notice of Withdrawal of a Proposed Rule Change To Amend Exchange Rule 7.35E Relating to the Auction Reference Price for a Trading Halt Auction Following a Regulatory Halt

August 10, 2018.

On May 15, 2018, NYSE American LLC (''Exchange'' or ''NYSE American'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 7.35E relating to the Auction Reference Price for a Trading Halt Auction following a regulatory halt. The proposed rule change was published for comment in the **Federal Register** on June 5, 2018.[3] On July 18, 2018, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received one comment letter in response to the proposed rule change.[6]

On August 10, 2018, the Exchange withdrew the proposed rule change (SR–NYSEAmer–2018–22).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Brent J. Fields,

Secretary.

[FR Doc. 2018–17632 Filed 8–15–18; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83341 (May 30, 2018), 83 FR 26121 (Jun. 5, 2018) (Notice).

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 83668 (Jul. 18, 2018), 83 FR 35040 (Jul. 24, 2018).

[6] *See* Letter from Duane Fiedler, to Secretary, Securities and Exchange Commission (Jun. 23, 2018).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83818; File No. SR–ISE–2018–56]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend Its Rules Related to Complex Orders

August 10, 2018.

On June 22, 2018, Nasdaq ISE, LLC (the ''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 add greater detail to its rules governing the trading of complex orders. The proposed rule change was published for comment in the **Federal Register** on July 9, 2018.[3] The Commission has received no comments regarding the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is August 23, 2018.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates October 5, 2018, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–ISE–2018–56).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Brent J. Fields,

Secretary.

[FR Doc. 2018–17626 Filed 8–15–18; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83576 (July 2, 2018), 83 FR 31783.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83820; File No. SR–IEX–2018–17]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Increase the Spread-Crossing Eligible Remove Fee to $0.0009 Per Share for Executions at or Above $1.00 That Remove Non-Displayed Liquidity

August 10, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

notice is hereby given that, on (date), the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''),[4] and Rule 19b–4 thereunder,[5] Investors Exchange LLC (''IEX'' or ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to modify its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to increase the Spread-Crossing Eligible Remove Fee to $0.0009 per share for executions at or above $1.00 that remove non-displayed liquidity. Changes to the Fee Schedule pursuant to this proposal are effective upon filing and will be operative on August 1, 2018.

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.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

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to increase the Spread-Crossing Eligible Remove Fee to $0.0009 per share for executions at or above $1.00. The proposed change eliminates the pricing incentive for removing non-displayed liquidity at or above $1.00 with a spread-crossing eligible order, as such execution will be subject to a fee of $0.0009. On May 1, 2018, the Exchange filed an immediately effective rule filing to introduce a more deterministic fee of $0.0003 per share for executions at or above $1.00 that result from removing liquidity with an order that is executable at the far side of the NBBO after accounting for the order's limit (if any), peg instruction (if any), market conditions, and all applicable rules and regulations (the ''Spread-Crossing Eligible Remove Fee'' incentive).[6]

As discussed in the rule filing to adopt the Spread-Crossing Eligible Remove Fee,[7] the intended purpose of the fee was to incentivize Members to route more orders to the Exchange that are executable at the far side of the NBBO by reducing the variability in fees to access liquidity on the Exchange. However, the Exchange has observed over time that the Spread-Crossing Eligible Remove Fee incentive has not served its intended purposes. Specifically, the Exchange has not seen any notable increase in spread-crossing orders [8] entered on the Exchange since the operative date of the Spread-Crossing Eligible Remove Fee incentive on May 1, 2018. In fact, the average monthly percentage of the Exchange's volume represented by executions resulting from spread-crossing orders decreased from 22.8% in May, to 21.6% in June of 2018. Accordingly, the Exchange is proposing to eliminate the Spread-Crossing Eligible Remove Fee incentive for interacting with resting non-displayed interest by increasing the fee to $0.0009.[9]

As a result of the proposed change, the following fees will be increasing to $0.0009 from $0.0003 for executions at or above $1.00 that result from removing non-displayed liquidity with a spread-crossing eligible order. All other fees shall remain unchanged.

Fee codes	Description	Fee
IN	Removes non-displayed liquidity with a spread-crossing eligible order	$0.0009
IQN	Removes non-displayed liquidity during periods of quote instability with a spread-crossing eligible order	[10] 0.0009

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b) [11] of the Act in general, and furthers the objectives of Sections 6(b)(4) [12] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that the proposed fee change is reasonable, fair and equitable, and non-discriminatory. The Exchange believes the proposal to eliminate the Spread-Crossing Eligible Remove Fee incentive is reasonable because, as discussed above, the fee incentive has not been successful in achieving its intended purpose of incentivizing Members to route more orders to the Exchange that are executable at the far side of the NBBO. The Exchange has limited resources available to it to devote to the operation of pricing incentives and as such, it is reasonable and equitable for the Exchange to reallocate those resources away from programs that are ineffective. The proposed change is also equitable and not unfairly discriminatory because the Spread-Crossing Eligible Remove Fee incentive for executions against resting non-displayed interest will be eliminated for all Members, as the increased fee will be charged to all Members that remove non-displayed liquidity with a spread-crossing eligible order.

The Exchange notes that as proposed, spread-crossing orders that remove displayed liquidity will be charged a lower fee than if such orders had removed non-displayed liquidity. However, the Exchange believes the proposal remains reasonable, equitable, and not unfairly discriminatory because spread-crossing orders may interact with non-displayed interest resting

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] *See* Securities Exchange Act Release No. 83147 (May 1, 2018), 83 FR 20118 (May 7, 2018) (SR–IEX–2018–9) [sic].

[7] *Id.*

[8] The Exchange defines ''spread-crossing eligible order'' as a buy order that is executable at the NBO or a sell order that is executable at the NBB after accounting for the order's limit (if any), peg instruction (if any), market conditions, and all applicable rules and regulations. *See* the Investors Exchange Fee Schedule, available on the Exchange public website.

[9] Consistent with the Exchange's existing Fee Schedule, the fee for executions below $1.00 will be 0.30% of the total dollar value of the transaction.

[10] The Exchange notes that, consistent with the existing Fee Schedule, executions with Fee Code Q that exceed the CQRF Threshold are subject to the Crumbling Quote Remove Fee identified in the Fee Code Modifiers table. Executions with Fee Code Q that do not exceed the CQRF Threshold are subject to the fees identified in the Fee Codes and Associated Fees table. *See* the Investors Exchange Fee Schedule, available on the Exchange public website.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

within the spread, thereby receiving price improvement equal to the delta between the execution price and the far side quotation (*i.e.,* the difference between the trade price and the NBO (NBB) for buy (sell) orders). Accordingly, the Exchange believes that spread-crossing orders removing non-displayed liquidity receive a significant benefit in the form of potential price improvement, and are thus not subject to unfairly discriminatory fees.

Moreover, the Exchange notes that the proposed fee for spread-crossing eligible orders that remove liquidity is identical to the fee assessed by the Exchange prior to the introduction of the Spread-Crossing Eligible Remove Fee, pursuant to the IEX Fee Schedule that was filed with the Commission pursuant to the Act.[13] Thus, the Exchange believe the proposed change does not present any unique or novel issues under the Act that have not already been considered by the Commission.

The Exchange further believes the proposed increase in the Spread-Crossing Remove Fee to $0.0009 from $0.0003 is reasonable in that is within the range of transaction fees currently charged by the Exchange,[14] and continues to be substantially lower than the fee for removing liquidity on competing exchanges with a ''maker-taker'' fee structure (*i.e.,* that provide a rebate to liquidity adders and charge liquidity removers).[15]

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. With regard to intra-market competition, the Exchange notes that the increased fee will be charged to all Members that remove non-displayed liquidity with a spread-crossing eligible order, and thus there will be no competitive burdens placed on Members as a result of the proposed change. With regard to 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 alternative trading systems. 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.

Moreover, trading venues are free to adjust their fees and credits in response to any changes that the Exchange makes to its fees and credits. If any of the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and paragraph (f) of Rule 19b–4[17] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2018–17 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–IEX–2018–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. All submissions should refer to File Number SR–IEX–2018–17 and should be submitted on or before September 6, 2018.

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[13] *See* Securities Exchange Act Release No. 80453 (April 13, 2017), 82 FR 18503 (April 19, 2017) (SR–IEX–2016–09).

[14] For example, the proposed Spread-Crossing Remove Fee is equal to the Non-Displayed Match Fee. *See* the Investors Exchange Fee Schedule, available on the Exchange public website.

[15] *See e.g.,* the New York Stock Exchange (''NYSE'') trading fee schedule on its public website reflects fees to ''take'' liquidity ranging from $0.0024–$0.0030 depending on the type of market participant, order and execution; the Nasdaq Stock Market (''Nasdaq'') trading fee schedule on its public website reflects fees to ''remove'' liquidity ranging from $0.0025–$0.0030 per share for shares executed in continuous trading at or above $1.00 or 0.30% of total dollar volume for shares executed below $1.00; the Cboe BZX Exchange (''Cboe BZX) trading fee schedule on its public website reflects fees for ''removing'' liquidity ranging from $0.0025–$0.0030, for shares executed in continuous trading at or above $1.00 or 0.30% of total dollar volume for shares executed below $1.00.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Brent J. Fields,

Secretary.

[FR Doc. 2018–17628 Filed 8–15–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83824; File No. SR–NASDAQ–2018–063]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing at Chapter XV, Section 2 Entitled "Nasdaq Options Market—Fees and Rebates"

August 10, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the 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 amend the Exchange's pricing at Chapter XV, Section 2 entitled ''Nasdaq Options Market—Fees and Rebates,'' which governs pricing for Nasdaq Participants using The Nasdaq Options Market LLC (''NOM''), Nasdaq's facility for executing and routing standardized equity and index options. The Exchange proposes to amend an incentive offered today related to its subsidy program, the Market Access and Routing Subsidy or ''MARS.''

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on August 1, 2018.

The text of the proposed rule change is available on the Exchange's website 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

NOM proposes to amend the Exchange's pricing at Chapter XV, Section 2 entitled ''Nasdaq Options Market—Fees and Rebates.'' Specifically, the Exchange proposes to amend an incentive in note ''d'' offered to NOM Participants that qualify for any MARS Payment Tier in Chapter XV, Section 2(6) related to the MARS subsidy program. MARS pays a subsidy to NOM Participants that provide certain order routing functionalities to other NOM Participants and/or use such functionalities themselves.[3]

Background on MARS

Today, to qualify for MARS, a NOM Participant's routing system (hereinafter ''System'') is required to meet certain criteria.[4]

MARS Payments are made to NOM Participants that have System Eligibility and have routed the requisite number of Eligible Contracts daily in a month (''Average Daily Volume''), which were executed on NOM.[5] Today, NOM Participants that have System Eligibility and have executed the requisite number of Eligible Contracts in a month will be paid the following rebates: [6]

Tiers	Average Daily Volume (''ADV'')	MARS payment (penny)	MARS payment (non-penny)
1	2,000	$0.07	$0.15
2	5,000	0.09	0.20
3	10,000	0.11	0.30
4	20,000	0.15	0.50
5	45,000	0.17	0.60

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Generally, under MARS, the Exchange pays participating NOM Participants to subsidize their costs of providing routing services to route orders to NOM. The Exchange believes that the proposed amendment to MARS will continue to attract higher volumes of electronic equity and ETF options volume to the Exchange from non-NOM Participants as well as NOM Participants. The order routing functionalities permit NOM Participants to provide access and connectivity to other Participants as well as utilize such access for themselves. The Exchange notes that one NOM Participant is eligible for payments under MARS, while another NOM Participant might potentially be liable for transaction charges associated with the execution of the order, because those orders were delivered to the Exchange through a NOM Participant's connection to the Exchange and that Participant qualified for the MARS Payment.

[4] Specifically the Participant's System is required to: (1) Enable the electronic routing of orders to all of the U.S. options exchanges, including NOM; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with NOM's API to access current NOM match engine functionality. The Participant's System would also need to cause NOM to be one of the top three default destination exchanges for (a) individually executed marketable orders if NOM is at the national best bid or offer (''NBBO''), regardless of size or time, or (b) orders that establish a new NBBO on NOM's Order Book, but allow any user to manually override NOM as a default destination on an order-by-order basis. Any NOM Participant is permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described herein and the Participant satisfies NOM that it appears to be robust and reliable. Participants remain solely responsible for implementing and operating its System.

[5] For the purpose of qualifying for the MARS Payment, Eligible Contracts may include Firm, Non-NOM Market Maker, Broker-Dealer, or Joint Back Office or ''JBO'' equity option orders that add liquidity and are electronically delivered and executed. Eligible Contracts do not include Mini Option orders.

[6] The specified MARS Payments are paid on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System and meet the requisite Eligible Contracts ADV. No payments are made with respect to orders that are routed to NOM, but not executed. Also, a Participant is not entitled to receive any other revenue from the Exchange for the use of its System specifically with respect to orders routed to NOM.

NOM Participants that qualify for Customer [7] and Professional [8] Penny Pilot Options Rebate to Add Liquidity Tier 6 will receive an extra $0.09 per contract rebate in addition to any MARS Payment tier on MARS Eligible Contracts the NOM Participant qualifies for in a given month.

Incentive

Today, the Exchange pays certain Customer and Professional Penny Pilot Options Rebates to Add Liquidity. These rebates are structured as a 6 tier rebate program ranging from $0.20 to $0.48 per contract, with increasing volume requirements for each tier. In addition to the Customer and Professional Penny Pilot Options Rebates to Add Liquidity, the NOM Participant may also qualify for an additional rebate provided the NOM Participant qualifies for any MARS Payment Tier for each transaction which adds liquidity in Penny Pilot Options in that month. Further, the Exchange pays an additional $0.04 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month, in addition to qualifying Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tiers 1–6.[9] Also, today, NOM Participants that qualify for a note ''c'' incentive receive the greater of the note ''c'' or note ''d'' incentive.[10]

The Exchange now proposes to amend note ''d'' to increase the additional $0.04 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity currently offered to NOM Participants that qualify for any MARS Payment Tier in addition to qualifying for Customer and/or Professional Rebate to Add Liquidity Tier 1 to $0.05 per contract for each transaction which adds liquidity in Penny Pilot Options in that month. For those NOM Participants that qualify for Customer and/or Professional Rebate to Add Liquidity Tiers 2–6, the Exchange will continue to provide the additional $0.04 per contract rebate for each transaction that adds liquidity in Penny Pilot Options in that month, provided the NOM Participant also qualifies for any MARS Payment Tier.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Participants and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is reasonable to amend note ''d'' in Chapter XV, Section 2(1) to increase the additional $0.04 per contract rebate for NOM Participants qualifying for Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tier 1 in addition to qualifying for any MARS Payment tier to $0.05 per contract for each transaction that adds liquidity in Penny Pilot Options for that month. The proposed amendment should continue to encourage NOM Participants to qualify for the Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tier 1 in addition to any MARS Payment tier, thereby executing a greater amount of order flow on NOM to the benefit of all market participants who may interact with the order flow. Furthermore, the proposed changes will allow the Exchange to remain competitive with other options exchanges that offer similar incentives.[13]

Further, the Exchange's proposal to amend the note ''d'' incentive as described above is equitable and not unfairly discriminatory. All NOM Participants are eligible to qualify for a MARS Payment, provided they have System Eligibility, and all NOM Participants may be eligible for the Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tier 1 provided they execute qualifying volume. All NOM Participants are eligible to qualify for the note ''d'' incentive provided the requisite requirements are met. The Exchange would uniformly pay the additional note ''d'' incentive to all qualifying NOM Participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to amend the note ''d'' incentive as described above does not impose an undue burden on competition. All NOM Participants are eligible to qualify for a MARS Payment, provided they have System Eligibility, and all NOM Participants may be eligible for a Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity provided they execute qualifying volume. All NOM Participants are eligible to qualify for the note ''d'' incentive provided the requisite requirements are met. The Exchange would uniformly pay the additional note ''d'' incentive to all qualifying NOM Participants. Furthermore, 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, or rebate opportunities available at other venues to be more favorable. The Exchange's proposal reflects this competitive environment as it will allow the Exchange remain competitive with other options exchanges that offer similar incentives, as discussed above.[14]

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

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[7] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation which is not for the account of broker or dealer or for the account of a ''Professional.'' *See* Chapter XV.

[8] The term ''Professional'' or (''P'') means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants. *See* Chapter XV.

[9] *See* Chapter XV, Section 2(1), note ''d.''

[10] The note ''c'' incentive can be found at Chapter XV, Section 2(1) and provides additional incentives to NOM Participants that qualify for the Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tier 6 in addition to meeting certain criteria specified in note ''c''.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] *See* MIAX PEARL Fee Schedule, Section 1(a). MIAX PEARL offers priority customers and non-priority customers a $0.25 per contract maker rebate in tier 1 for adding liquidity in penny classes. *See* Cboe BZX Options Exchange (''BZX'') Fee Schedule. BZX offers customers and professionals a base rebate of $0.25 per contract for adding liquidity in penny pilot options. Under NOM's proposal, NOM Participants would similarly have the opportunity to earn up a $0.25 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity in Tier 1 (*i.e.,* the $0.20 per contract Tier 1 rebate plus the additional $0.05 note ''d'' incentive), provided they meet the requisite qualifications.

[14] *See* note 13 above.

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

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:

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–2018–063 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–2018–063. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2018–063, and should be submitted on or before September 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–17635 Filed 8–15–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83823; File No. SR–NASDAQ–2018–064]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Fees Under Rules 7014(e) and 7018(a)

August 10, 2018

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 August 1, 2018, 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 amend the Exchange's fees at Rule 7014(e) to apply additional criteria required to qualify for a fee of $0.0029 per share executed, and to amend Rule 7018(a) to assess no fees for Midpoint Extended Life Orders[3] in securities of all three Tapes.[4]

The text of the proposed rule change is available on the Exchange's website 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fees at Rule 7014(e), concerning Qualified Market Makers ("QMMs"),[5] to apply additional criteria required to qualify for a fee of $0.0029 per share executed, and to amend Rule 7018(a), concerning the fees and credits provided for the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at $1 or more that it trades, to assess no fees for Midpoint Extended Life Orders in securities of all three Tapes. Rule 7014(e) provides the fees and rebates applicable to QMMs. Rule 7018(a)(1) sets forth the fees and credits for the execution and routing of orders in Nasdaq-listed securities (Tape C); Rule 7018(a)(2) sets forth the fees and credits for the execution and routing of securities listed on the New York Stock Exchange LLC (Tape A); and Rule 7018(a)(3) sets forth the fees and credits for the execution and routing of securities listed on exchanges other than Nasdaq and NYSE (Tape B). The Exchange is proposing to assess no fee for all Midpoint Extended Life Orders.

First Change

Under Rule 7014(e), the Exchange charges a QMM $0.0030 per share executed for removing liquidity in Nasdaq-listed securities priced at $1 or more, and $0.00295 per share executed for removing liquidity in securities priced at $1 or more per share listed on

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rule 4702(b)(14).

[4] Tape C securities are those that are listed on the Exchange, Tape A securities are those that are listed on NYSE, and Tape B securities are those that are listed on exchanges other than Nasdaq or NYSE.

[5] To be designated a QMM, a member must meet the following criteria: (1) The member is not assessed any "Excess Order Fee" under Rule 7018 during the month; (2) the member quotes at the NBBO at least 25% of the time during regular market hours in an average of at least 1,000 securities per day during the month; and (3) the member is a registered Nasdaq market maker. *See* Rule 7014(d).

exchanges other than Nasdaq, if the QMM's volume of liquidity added through one or more of its Nasdaq Market Center MPIDs during the month (as a percentage of Consolidated Volume [6]) is not less than 0.85%. The Exchange assesses a charge of $0.0029 per share executed for removing liquidity in securities priced at $1 or more per share listed on exchanges other than Nasdaq if the QMM has a combined Consolidated Volume (adding and removing liquidity) of at least 3.7%, and the QMM also meets the QMM Tier 2 qualification criteria. The QMM Tier 2 qualification criteria requires a QMM to execute shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.90% of Consolidated Volume during the month.

The Exchange is proposing to require a QMM to have MOC/LOC volume greater than 0.25% of Consolidated Volume in addition to having combined Consolidated Volume (adding and removing liquidity) requirement to at least 3.7%, to qualify for the $0.0029 per share executed fee. Market on Close (MOC) [7] and Limit on Close (LOC) [8] Orders are designated to participate in the Nasdaq Closing Cross. This additional criteria is reflective of the Exchange's desire to provide incentives to attract order flow to the Exchange in securities listed on exchanges other than Nasdaq in return for significant market-improving behavior. In this case, the Exchange is promoting participation in the Nasdaq Closing Cross by QMMs by requiring MOC/LOC volume above 0.25% of Consolidated Volume. The addition of a modest level of Nasdaq Closing Cross participation to the qualification criteria will help ensure that QMMs are providing significant market-improving behavior in return for the fee.

Second Change

The purpose of the second proposed rule change is to amend the Exchange's transaction fees at Rule 7018(a)(1)–(3) to charge no fee for execution of Midpoint Extended Life Orders in securities priced $1 or more. The Midpoint Extended Life Order is an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the NBBO and that will not be eligible to execute until the Holding Period of one half of a second has passed after acceptance of the Order by the System.[9] Once a Midpoint Extended Life Order becomes eligible to execute by existing unchanged for the Holding Period, the Order may only execute against other eligible Midpoint Extended Life Orders.

Under Rules 7018(a)(1)–(3) the Exchange provides credits to, and assesses fees on, members for execution of displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) if they qualify by meeting the requirements of the various credit and fee tiers under those rules. The Exchange historically had not assessed a fee for the execution of any Midpoint Extended Life Order, but in July 2018 it began to assess a fee of $0.0006 per share executed for executions in Midpoint Extended Life Orders.[10] The Exchange, however, continued to not assess a fee for the execution of Midpoint Extended Life Orders if the member executed at least at least 250,000 shares in Midpoint Extended Life Orders in June 2018. The Exchange is now proposing to assess no charge for any execution [11] of a Midpoint Extended Life Order.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] 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.

First Change

The Exchange believes that the $0.0029 per share executed charge for removing liquidity in securities priced at $1 or more per share listed on exchanges other than Nasdaq will continue to be reasonable because the fee will remain unchanged. When the Exchange adopted the fee,[14] it believed that assessing the fee was reasonable because it was set at a level that is lower than the standard removal fee of $0.0030 per share executed, thereby providing an incentive to market participants, and it was also based on the Exchange's analysis of the cost to the Exchange of offering a lower fee, thereby decreasing the revenue derived from transactions by members that qualify for the fee, and the desired benefit to the market provided by the members that meet the fee's qualification criteria. The Exchange noted that the fee's qualification criteria provided an incentive to members to increase their participation in the market as measured by Consolidated Volume, which benefits all market participants. The Exchange also noted that members may qualify for a $0.00295 per share executed fee for removing liquidity in Tape A or B securities priced at $1 or more if the member's volume of liquidity added through one or more of its Nasdaq Market Center MPIDs during the month (as a percentage of Consolidated Volume) is not less than 0.80%, which was subsequently increased to 0.85%. The Exchange explained that the proposed fee would continue to require a member to both qualify under the Tier 2 criteria that requires the member to execute shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.90% of Consolidated Volume during the month, and also provide an increased combined Consolidated Volume (adding and removing liquidity) requirement (which was at least 3.5%, but subsequently increased to at least 3.7%). Consequently, the Exchange noted that to qualify for a lower transaction fee for removing liquidity in Tape A or B securities under the QMM Program, the member must both provide greater Consolidated Volume through adding liquidity during the month (*i.e.,* 0.90% versus 0.80%) and provide a certain level of combined Consolidated Volume, which accounts for both adding liquidity and removing liquidity. As noted above, the Exchange is not proposing to change the fee and the analysis described above remains valid.

[6] Consolidated Volume is the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. *See* Rule 7018(a).

[7] A ''Market On Close Order'' or ''MOC Order'' is an Order Type entered without a price that may be executed only during the Nasdaq Closing Cross. *See* Rule 4702(b)(11).

[8] A ''Limit On Close Order'' or ''LOC Order'' is an Order Type entered with a price that may be executed only in the Nasdaq Closing Cross, and only if the price determined by the Nasdaq Closing Cross is equal to or better than the price at which the LOC Order was entered. *See* Rule 4702(b)(12).

[9] *See* Rule 4702(b)(14).

[10] *See* Securities Exchange Act Release No. 83522 (June 26, 2018), 83 FR 30998 (July 2, 2018) (SR–NASDAQ–2018–047).

[11] Transactions in Midpoint Extended Life Orders below $1 will remain at no cost.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* Securities Exchange Act Release No. 78977 (September 29, 2016), 81 FR 69140 (October 5, 2016) (SR–NASDAQ–2016–032).

Accordingly, the Exchange believes that the fee remains reasonable.

The Exchange believes that the fee will continue to be an equitable allocation and not unfairly discriminatory with the new MOC and LOC criteria because it is reflective of the success that the lower charge tier has had in promoting beneficial market participation, as measured by combined Consolidated Volume (adding and removing liquidity). Consequently, the Exchange believes that requiring QMMs to provide additional beneficial market participation through the execution of MOC and LOC Orders in the Nasdaq Closing Cross is warranted. The Exchange does not believe that the new requirement will result in a significant reduction in the number of QMMs that will likely qualify for the lower transaction fee. Moreover, the Exchange is not limiting which QMMs may qualify for the reduced charge. As noted, the QMM Program is intended to encourage members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities, thereby benefitting Nasdaq and other investors by committing capital to support the execution of orders. To receive the $0.0029 per share executed charge, a member must meet the Tier 2 criteria, which requires the QMM to execute shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent above 0.90% of Consolidated Volume during the month. In addition, the QMM must provide a certain level of combined Consolidated Volume, which accounts for both adding liquidity and removing liquidity. The Exchange is proposing to add new criteria designed to promote participation in the Nasdaq Closing Cross to make the qualification criteria required to receive the incentive more meaningful in terms of the beneficial market activity required to receive the reduced charge. QMMs may continue to qualify for the reduced charge while also providing more beneficial market participation. In this regard, any QMM may choose to provide the level of MOC and/or LOC Orders required to be eligible for the fee. Thus, the Exchange does not believe that the new criteria discriminates unfairly and believes that it is equitably allocated.

Second Change

The Exchange believes that allowing transactions of Midpoint Extended Life Orders at no cost is reasonable because it currently offers them at no cost, as described above. In addition, the Exchange does not charge a fee for transactions in Orders with a RTFY routing Order Attribute.[15] Such an Order must meet the definition of Designated Retail Order, which requires, among other things, that the Order not originate from a trading algorithm or any other computerized methodology.[16] Thus, allowing transactions of the RTFY Order Attribute at no cost is designed to promote the Exchange as a venue for retail investor Orders. Likewise, the Exchange is proposing to allow all transactions in Midpoint Extended Life Orders at no cost to promote use of such Orders and consequently the quality of the market in Midpoint Extended Life Orders.

The Exchange believes that not charging a fee for executions in Midpoint Extended Life Order is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated members. The Midpoint Extended Life Order may be used by any market participant that is willing to satisfy the requirements of the Order Type and therefore qualify for the proposed zero fee tiers. Moreover, members not interested in using Midpoint Extended Life Orders will continue to have the ability to enter midpoint Orders in the Nasdaq System, which have both fees and credits associated with their execution.[17] The Exchange will likely assess fees again for transactions in Midpoint Extended Life Orders in the near future, once it has had time to further assess the nature of the market in Midpoint Extended Life Orders to determine the appropriate fee. Accordingly, the proposed fee does not discriminate in any way.

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, or rebate opportunities available at other venues to be more favorable. 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. In this instance, the proposed rule change does not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues.

With respect to the first proposed change, although the change to the QMM qualification criteria may limit the benefits of the program to the extent QMMs that currently qualify for the $0.0029 per share executed charge are unable to meet the more stringent qualification criteria, the incentive is reflective of the need for exchanges to offer significant financial incentives to attract order flow in return for meaningful market-improving behavior. The Exchange, however, does not believe that the proposed qualification criteria will negatively impact who will qualify for the $0.0029 per share executed charge but will rather have a positive impact on overall market quality as QMMs increase their participation in the Nasdaq Closing Cross to qualify for the lower charge. If, however, the Exchange is incorrect and the changes proposed herein are unattractive to QMMs, it is likely that Nasdaq will lose market share as a result.

With respect to the second proposed change, assessing no fee for executions of Midpoint Extended Life Orders will not place any burden on competition, but rather will help continue to attract interest in the use of the Order Type by making it attractive to members that seek to execute at the midpoint with like-minded members. To the extent the proposal is successful in promoting liquidity in Midpoint Extended Life Orders, other markets may be incented to provide a competitive response by innovating like the Exchange has done in this instance. To the extent the proposal is not successful in promoting liquidity in Midpoint Extended Life

[15] RTFY is a routing option available for an order that qualifies as a Designated Retail Order under which orders check the System for available shares only if so instructed by the entering firm and are thereafter routed to destinations on the System routing table. If shares remain unexecuted after routing, they are posted to the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. RTFY is designed to allow orders to participate in the opening, reopening and closing process of the primary listing market for a security. *See* Rule 4758(a)(1)(A)(v)b.

[16] *See* Rule 7018.

[17] Based on whether the member is removing or adding liquidity. *See* Rule 7018(a) and (b).

Orders, it would have no meaningful impact on competition as few transactions in Midpoint Extended Life Orders would occur. In sum, if the proposal to assess no fees for executions of Midpoint Extended Life Orders is unattractive to market participants, it is likely that the Exchange will not gain any market share as a result and therefore no competitive impact.

Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[18]

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:

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–2018–064 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–2018–064. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2018–064, and should be submitted on or before September 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–17634 Filed 8–15–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83821; File No. SR–NYSE–2018–34]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend NYSE Rule 104 Governing Transactions by Designated Market Makers

August 10, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 31, 2018, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, 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 consolidate and restructure subsections (g), (h) and (i) of Rule 104 governing transactions by Designated Market Makers (''DMM''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to consolidate and restructure subsections (g), (h) and (i) of Rule 104 governing DMM transactions.

Background

Rule 104 sets forth the obligations of Exchange DMMs. Under Rule 104(a), DMMs registered in one or more securities traded on the Exchange are required to engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market insofar as reasonably practicable. Rule 104(a) also enumerates the specific responsibilities and duties of a DMM, including: (1) Maintenance of a continuous two-sided quote, which

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

mandates that each DMM maintain a bid or an offer at the National Best Bid (''NBB'') and National Best Offer (''NBO,'' together the ''NBBO'') for a certain percentage of the trading day,[4] and (2) the facilitation of, among other things, openings, re-openings, and the close of trading for the DMM's assigned securities, all of which may include supplying liquidity as needed.[5] Rule 104(f) imposes an affirmative obligation on DMMs to maintain, insofar as reasonably practicable, a fair and orderly market on the Exchange in assigned securities, including maintaining price continuity with reasonable depth and trading for the DMM's own account when lack of price continuity, lack of depth, or disparity between supply and demand exists or is reasonably to be anticipated.

Rule 104(g) provides that transactions on the Exchange by a DMM for the DMM's account must be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in the particular stock. More particularly, Rule 104(g) describes certain transactions that are permitted to render the DMM's position adequate to the market's needs, including Neutral and Non-Conditional Transactions, and certain DMM transactions that are prohibited.

Rule 104(g)(i)(A)(I) defines Neutral Transactions as a purchase or sale by which a DMM liquidates or decreases a position. Neutral Transactions may be made without restriction as to price. However, the DMM's obligation to maintain a fair and orderly market may require re-entry on the opposite side of the market trend after effecting one or more Neutral Transactions. Such re-entry transactions should be in accordance with the immediate and anticipated needs of the market.

Rule 104(g)(i)(A)(II) defines Non-Conditional Transactions as a DMM's bid or purchase and offer or sale that establishes or increases a position, other than a transaction that reaches across the market to trade with the Exchange BBO. Non-Conditional Transactions may be made without restriction as to price in order to (i) match another market's better bid or offer price; (ii) bring the price of a security into parity with an underlying or related security or asset; (iii) add size to an independently established bid or offer on the Exchange; (iv) purchase at the published bid price on the Exchange; (v) sell at the published offer price on the Exchange; (vi) purchase or sell at a price between the Exchange BBO; and (vii) purchase below the published bid or sell above the published offer on the Exchange. As with Neutral Transactions, the DMM's obligation to maintain a fair and orderly market may also require re-entry on the opposite side of the market trend after effecting one or more Non-Conditional Transactions. Such re-entry transactions should be commensurate with the size of the Non-Conditional Transactions and the immediate and anticipated needs of the market.

Rule 104(g)(i)(A)(III) provides that, except as otherwise permitted by Rule 104, during the last ten minutes prior to the close of trading, a DMM with a long or short position in a security is prohibited from making a purchase or sale in such security that results in a new high or low price, respectively, on the Exchange for the day at the time of the DMM's transaction (''Prohibited Transactions'').[6]

Finally, Rule 104(h) addresses DMM transactions in securities that establish or increase the DMM's position. Rule 104(h)(i) defines a Conditional Transaction as a DMM transaction in a security that establishes or increases a position and reaches across the market to trade as the contra-side to the Exchange published bid or offer.[7]

Rule 104(h)(ii) permits ''Conditional Transactions'' without restriction as to price if they are followed by appropriate re-entry on the opposite side of the market commensurate with the size of the DMM's transaction. Thus, if a DMM establishes or increases a long position by buying from the Exchange best offer, or establishes or increases a short position by selling to the Exchange best bid, such transaction would be followed by the DMM quoting on the opposite side of the last transaction in order to dampen the impact of that transaction on the market.

The re-entry obligations for Conditional Transactions are set forth in Rule 104(h)(iii). Under Rule 104(h)(iii)(A), DMMs must re-enter within certain Exchange issued guidelines, called price participation points (''PPP''), that identify the price at or before which a DMM is expected to re-enter the market after effecting a Conditional Transaction. PPPs are only minimum guidelines and compliance with them does not guarantee that a DMM is meeting its obligations.

Notwithstanding that a security may not have reached the PPP, the DMM may be required to re-enter the market immediately after a Conditional Transaction based on the price and/or volume of the DMM's trading in reference to the market in the security at the time of such trading. In such situations DMMs may or may not rely on the fact and circumstance that there may have been one or more independent trades following the DMM's trading to justify a failure to re-enter the market. As set forth in Rule 104(h)(iii)(C)(I) and (II), immediate re-entry is required after the following Conditional Transactions:

- A purchase that (1) reaches across the market to trade with an Exchange published offer that is above the last differently priced trade on the Exchange and above the last differently priced published offer on the Exchange, (2) is 10,000 shares or more or has a market value of $200,000 or more, and (3) exceeds 50% of the published offer size; and
- a sale that (1) reaches across the market to trade with an Exchange published bid that is below the last differently priced trade on the Exchange and below the last differently priced published bid on the Exchange, (2) is 10,000 shares or more or has a market value of $200,000 or more, and (3) exceeds 50% of the published bid size.[8]

Rule 104(h)(iv) permits certain other Conditional Transactions without restriction as to price. Specifically, under subsection (h)(iv)(A), a DMM's purchase from the Exchange published offer that is priced above the last differently-priced trade on the Exchange or above the last differently-priced published offer on the Exchange. Similarly, under subsection (h)(iv)(B), a DMM's sale to the Exchange published bid that is priced below the last differently-priced trade on the Exchange or below the last differently-priced published bid on the Exchange.

Finally, Rule 104(i) provides that re-entry obligations following such Conditional Transactions would be the same as the re-entry obligations for Non-Conditional Transactions pursuant to Rule 104(g).

Proposed Rule Change

The Exchange proposes to consolidate and restructure current Rules 104(g), (h)

[4] *See* Rule 104(a)(1).

[5] *See* Rule 104(a)(2)(3). Rule 104(e) further provides that DMM units must provide contra-side liquidity as needed for the execution of odd-lot quantities eligible to be executed as part of the opening, reopening, and closing transactions but that remain unpaired after the DMM has paired all other eligible round lot sized interest.

[6] Rule 104(g)(i)(A)(III) contains two exceptions to Prohibited Transactions: (1) Matching another market's better bid or offer price, and (2) bringing the price of a security into parity with an underlying or related security or asset.

[7] A DMM reaches across the market when the DMM buys from the NYSE offer or sells to the NYSE bid.

[8] For purposes of subsections (h)(iii)(C)(I) and (h)(iii)(C)(II), a Sweep is viewed as a transaction with the published bid or offer.

and (i), which would be deleted and incorporated as modified into a new subsection (g) titled ''Transactions by DMMs.'' The Exchange also proposes certain technical and conforming changes.[9]

As discussed below, proposed Rule 104(g) would revise the requirements for DMM transactions based on the type of trading by the DMM, rather than by reference to the DMM's position. As restructured, the proposed rule would replace the four current types of DMM transactions based on the DMM's position (Neutral, Non-conditional, Conditional and Prohibited) with a single, enhanced DMM transaction called an ''Aggressing Transaction'' that would retain existing re-entry requirements. During the final seconds of trading before the close of trading, Aggressing Transactions that would result in a new consolidated high (low) price for a security during that trading day would be prohibited with one exception discussed below.

Proposed Rule 104(g)(1)

Proposed Rule 104(g)(1) would be based on current Rule104(g)(i). Like current Rule 104(g)(i), proposed Rule 104(g)(1) would specify that transactions on the Exchange by a DMM unit for the DMM unit's account are to be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in the particular stock. Proposed Rule 104(g)(1) would eliminate the definitions of Neutral and Non-Conditional Transactions [10] and retain Conditional Transactions, which would be enhanced and renamed ''Aggressing Transactions.''

In proposed Rule 104(g)(1)(A), the Exchange would define an Aggressing Transaction as a DMM unit transaction that:

(i) Is a purchase (sale) that reaches across the market to trade as the contra-side to the Exchange published offer (bid); and

(ii) is priced above (below) the last differently-priced trade on the Exchange and above (below) the last differently-priced published offer (bid) on the Exchange.

The proposed definition of Aggressing Transaction would be the same as the current definition of Conditional Transaction in Rule 104(h)(i) and (ii), except that Aggressing Transaction would not be defined by reference to whether the transaction increases or decreases the DMM's position. Accordingly, a DMM unit Aggressing Transaction would be any trade where the DMM is both reaching across the market and aggressively moves the price of the security.

Prohibited Transactions

The Exchange proposes to retain the existing prohibition on certain DMM transactions at the end of the trading day and to modify Prohibited Transactions in three ways.[11]

First, the Exchange proposes to modify the types of transactions that would be prohibited. Currently, the rule prohibits transactions by a DMM that create a new high or low price on the Exchange. The Exchange proposes instead to prohibit Aggressing Transactions that create a new consolidated high or low price. The Exchange believes that this proposed change would allow a DMM to quote aggressively in assigned securities without the risk of trading at a price that could create a new Exchange high or low price. For example, if the Exchange bid is $10.10, the Exchange offer is $10.12 and the last Exchange sale was $10.10, and the DMM unit is long and is seeking to narrow the spread by posting a bid at $10.11. Under the Exchange's current rule, if there were dark sell interest at $10.11, a DMM with a long position would be prohibited from attempting to post a bid at $10.11 because it could trade at that price and create a new high price on the Exchange. The current rule thus thwarts the ability of the DMM to meet their affirmative obligations to quote aggressively in assigned securities.

Moreover, the Exchange proposes to permit, consistent with the current exception in Rule 104(g)(i)(A)(III), Aggressing Transactions in the final ten seconds that would result in a new consolidated high (low) price for a security in order to bring the price of that security into parity with an underlying or related security or asset.[12]

Second, the Exchange proposes to eliminate the reliance on the DMM's position to determine whether to prohibit a transaction. The Exchange does not believe that the position of the DMM should be the defining feature of whether a trade is prohibited. Rather, as described above, the Exchange believes that whether a trade is prohibited should be based on whether the trade both aggressively takes liquidity and creates a new consolidated high or low price for the day. By eliminating reliance on position information, the proposed prohibited transaction would be more restrictive than the current rule because a DMM could not reach across the market to liquidate a position. However, the Exchange believes that this proposed change would support DMMs in meeting their affirmative obligations while at the same time preventing DMMs from aggressively taking liquidity and moving prices on the Exchange immediately before the closing auction.

Finally, the Exchange proposes to modify the period during which such transactions are prohibited.[13] To reflect the increased transparency regarding closing imbalances leading into the close and the speed and volume of transactions in today's electronic marketplace, the Exchange proposes to shorten the period during which certain transactions are prohibited to the final ten seconds of trading before the scheduled close of trading. The Exchange believes that limiting the period for Prohibited Transactions, as amended, is appropriate for a high-speed trading environment where trade speed is measured in microseconds and the final ten seconds of trading is an active trading period.[14] Moreover, as noted above, the transactions proposed to be prohibited would include liquidating transactions. Therefore, by shortening the time period restricting such trading, the DMMs would have more time to engage in liquidating transactions before the prohibition begins.[15]

The current rule prohibiting certain transactions in the last ten minutes of trading was adopted before the advent of rapid electronic trading and before the Exchange began disseminating

[9] The Exchange proposes the following technical and conforming changes: (1) Romanettes (i) through (vi) in Rule 104(b) and (i) through (iv) in Rule 104(f) would be replaced with numbers 1 through 6 and 1 through 4, respectively; (2) current subsection (j) would become new subsection (h); and (3) current subsection (k) would become new subsection (i).

[10] As discussed below, the re-entry obligations for Neutral and Non-Conditional Transactions would be retained and incorporated into proposed subsection (g)(2).

[11] *See* Rule 104(g)(i)(A)(III) and note 16, *infra.*

[12] This exception would continue to be appropriate because an independent party and not the DMM would set the price. *See* Securities Exchange Act Release No. 54860 (December 1, 2006), 71 FR 71221, 71229 (December 8, 2006) (SR–NYSE–2006–76) (''Release No. 54860''). The Exchange does not propose to incorporate the other current exception permitting transactions during the last ten minutes of trading that result in a new Exchange high or low for the day in order to match another market's better bid or offer because a DMM could not create a new consolidated high or low price by matching a better away bid or offer.

[13] *See* Rule 104(g)(i)(A)(III).

[14] During the first quarter of 2018, the Exchange traded on average in excess of 1% of the total NYSE daily volume in the last 10 seconds of the trading day.

[15] Currently, during the last ten minutes of trading, DMMs are not prohibited from engaging in transactions that create a new high or low on the Exchange and are also a liquidating transaction. As proposed, Aggressing Transactions resulting in a new consolidated high or low prior to the final ten seconds of trading would be permitted but would be subject to the re-entry obligations contained in proposed Rule104(g)(2), discussed below.

Order Imbalance Information in its current form, as described in Rule 123C(6).[16] The Exchange believes that the availability of order imbalance information before the close of trading provides the public with updated trading information that was previously available only to DMMs. As a result, although the public now has significantly greater imbalance information leading into the close,[17] there has been no commensurate modernization of when the period for DMM prohibited transactions begins. Moreover, there is limited information asymmetry leading into the close; DMM algorithms only have access to the same data feeds that are available to the public. While Floor-based DMMs have access to additional non-public information, there is almost no manual trading[18] between 3:50 p.m. and 3:59:50 p.m., and thus limited opportunity for the Floor-based DMMs to act on that information. For example, Floor broker crowd interest is not revealed until 4:00 p.m. Further, DMMs do not determine their level of participation in the close until all interest has been entered for the close, including such Floor broker crowd interest, which is after 4:00 p.m. The Exchange accordingly believes that prohibiting transactions during the last ten seconds of trading would provide the same level of protection as intended by the current rule prohibiting certain transactions in the last ten minutes of trading.

To effect these changes, proposed Rule 104(g)(1)(B) would prohibit any Aggressing Transaction during the final ten seconds of trading before the scheduled close of trading that would result in a new consolidated high (low) price for a security during that trading day, except for Aggressing Transactions that would result in a new consolidated high (low) price for a security in order to bring the price of that security into parity with an underlying or related security or asset. Proposed Rule 104(g)(1)(B) would thus replace the current rule on Prohibited Transactions, a rule originally designed to prevent specialists from setting a price in the final ten minutes of trading in a security in which the specialist had a position.[19] Finally, the Exchange notes that the proposal is consistent with, and in no way diminishes or relieves the DMM of, the other obligations regarding the quality of the markets in securities to which DMMs are assigned under Rule 104.[20]

Proposed Rule 104(g)(2)

Proposed subsection (g)(2) would set forth the re-entry obligations for DMM transactions, which would be based on the current rule's re-entry obligations. Specifically, proposed Rule 104(g)(2) would provide that a DMM unit's obligation to maintain a fair and orderly market may require re-entry on the opposite side of the market after effecting one or more transactions. The proposed rule would provide that such re-entry should be commensurate with the size of the transaction(s) and the immediate and anticipated needs of the market, which are the same re-entry requirements specified in current Rules 104(g)(i)(A)(I)(3) and 104(g)(i)(A)(II)(3) for Neutral and Non-Conditional Transactions, respectively, as well as the types of Conditional Transactions referenced in current Rules 104(h)(iv) and 104(i).[21] Accordingly, these re-entry obligations would be applicable to DMM transactions other than Aggressing Transactions.

Proposed Rule 104(g)(2)(A) and (B) would specify the re-entry obligations for Aggressing Transactions. Following an Aggressing Transaction, proposed Rule 104(g)(2)(A) would require the DMM unit to re-enter the opposite side of the market at or before the applicable PPP for that security commensurate with the size of the Aggressing Transaction. The re-entry requirement for Aggressing Transactions set forth in proposed Rule 104(g)(2)(A) is based on the current re-entry requirements for certain Conditional Transactions set forth in current Rule 104(h)(iii).

Under proposed Rule 104(g)(2)(B), if the Aggressing transaction (i) is 10,000 shares or more or has a market value of $200,000 or more, and (ii) exceeds 50% of the published offer (bid) size, immediate re-entry on the opposite side of the market at or before the applicable PPP for the security commensurate with the size of the Aggressing Transaction would be required. The re-entry requirement for block-sized Aggressing Transactions set forth in proposed Rule 104(g)(2)(B) is based the current re-entry requirements for block-sized Conditional Transactions under Rule 104(h)(iii)(C). The Exchange proposes a clarifying amendment in proposed Rule 104(g)(2)(B), as compared to current Rule 104(h)(iii)(C), to provide that such re-entry must be at or before the applicable PPP for that security. The Exchange believes that this proposed change will provide greater detail in the

[16] The rule on Prohibited Transactions was adopted in 2006. *See* note 19, *infra.* In 2010, the Exchange enhanced the transparency of its marketplace and improved the quality of the closing auctions by modifying the dissemination of Order Imbalance Information pursuant to Rule 123C(6) to commence at 3:45 p.m. and including indicative closing price information and updated imbalance information in the pre-closing Order Imbalance data feeds. *See* Securities Exchange Act Release No. 61233 (December 23, 2009), 74 FR 69169 (December 30, 2009) (SR–NYSE–2009–111) (Approval Order) (''Closing Filing''). *See also* Securities Exchange Act Release No. 61616 (March 1, 2010), 75 FR 10533 (March 8, 2010) (SR–NYSE–2010–12) (Notice of Filing of Extension of Implementation Date of the Closing Filing).

[17] The Order Imbalance Information data feed provides automated, streaming information about real-time order imbalances that accumulate prior to the close of trading on the Exchange, and also includes the mandatory market-on-close (''MOC'') and limit-on-close (''LOC'') imbalance information that the Exchange is required to disseminate under NYSE Rule 123C(5). Order Imbalance Information is published every five seconds between 3:45 p.m. and 4:00 p.m. During this period, all market participants have access to the same imbalance information.

[18] For instance, in the first quarter of 2018, there were only 275 manual DMM trades that occurred in the last 9 minutes, 50 seconds of trading, representing just .0001% of the total shares traded on the NYSE in that time period.

[19] *See* Release No. 54860, 71 FR at 71221. When the prohibition was adopted in 2006, Prohibited Transactions were set forth in Supplementary Material .10 of Rule 104. The rationale behind preventing specialists from setting the price of a security on the Exchange in the final ten minutes of trading was to prevent specialists from inappropriately influencing the price of a security at the close to advantage a specialist's proprietary position. *See id.,* 71 FR at 71229. The rule was retained in 2008 when the Exchange's New Market Model transformed specialists into DMMs, who are no longer agents for the Exchange's limit order book and whose trading activity on the Exchange is limited to proprietary trading. *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379, 64381 (October 29, 2008) (SR–NYSE–2008–46).

[20] In general, as noted above, transactions on the Exchange by a DMM for the DMM's account must be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in the particular stock, and DMMs must refrain from causing or exacerbating excessive price movements. DMMs have affirmative obligations under Rule 104(a) to engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market insofar as reasonably practicable. Specifically, Rule 104(f)(ii) sets forth the DMM's obligation to act as reasonably necessary to ensure appropriate depth and maintain reasonable price variations between transactions (also known as price continuity) and prevent unexpected variations in trading. Further, under Rule 123D(a), openings and reopenings must be fair and orderly, reflecting the DMM's professional assessment of market conditions at the time, and appropriate consideration of the balance of supply and demand as reflected by orders represented in the market. The Exchange supplies DMMs with suggested Depth Guidelines for each security in which a DMM is registered, and DMMs are expected to quote and trade with reference to the Depth Guidelines. *See* Rule 104(f)(iii).

[21] Current Rule 104(h)(iv) provides that two types of Conditional Transactions may be made without restriction as to price: (1) A DMM's purchase from the Exchange published offer that is priced above the last differently-priced trade on the Exchange or above the last differently-priced published offer on the Exchange ((h)(iv)(A)); and (2) a DMM's sale to the Exchange published bid that is priced below the last differently-priced trade on the Exchange or below the last differently-priced published bid on the Exchange ((h)(iv)(B)). Current Rule 104(i) provides that the re-entry obligations following transactions defined in Rule 104(h)(iv)(A) and (h)(iv)(B) are the same as for Non-Conditional Transactions pursuant to Rule 104(g)(i)(A)(3).

rule regarding the price at which the re-entry would be required.

Proposed Rule 104(g)(3)

Finally, proposed Rule 104(g)(3)(A) would provide that the Exchange would periodically issue PPP Guidelines that identify the price at or before which a DMM unit is expected to re-enter the market following an Aggressing Transaction. PPPs are only minimum guidelines and compliance with them does not guarantee that a DMM unit is meeting its obligations. This portion of the proposed Rule is based on Rule 104(h)(iii)(A) without any differences.

Proposed Rule 104(g)(3)(B) would provide that, notwithstanding that a security may not have reached the PPP, the DMM unit may be required to re-enter the market immediately after an Aggressing Transaction based on the price and/or volume of the DMM unit's trading in reference to the market in the security at the time of such trading. In such situations, DMM units may or may not rely on the fact and circumstance that there may have been one or more independent trades following the DMM unit's trading to justify a failure to re-enter the market. Subsection (B) of the proposed rule is based on current Rule 104(h)(iii)(B).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(5) of the Act,[23] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

In particular, the Exchange believes that revising the requirements for DMM transactions based on the type of DMM trading rather than the DMM's position and introducing a new, enhanced DMM transaction called an ''Aggressing Transaction'' would remove impediments to and perfect the mechanism of a free and open market and a national market system by simplifying and streamlining the requirements for DMM transactions. The proposal would eliminate four separate types of DMM transactions and introduce a simplified framework whereby all DMM transactions would be subject to general re-entry requirements based on the current re-entry obligations for Neutral, Non-Conditional and Conditional transactions, and specific re-entry requirements for Aggressing Transactions, except for Aggressing Transactions during the final ten seconds of trading that result in a new consolidated high or low, which would be prohibited.

The Exchange believes that the proposal would not be inconsistent with the public interest and the protection of investors. As noted, the proposed rule would carry over the requirement that all DMM transactions be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in the particular stock. Further, DMM Aggressing Transactions would continue to require re-entry on the opposite side of the market at or before the applicable PPP for the security as warranted. Aggressing Transactions in the final ten seconds of trading that result in a new consolidated high (low) price for a security during that trading day would continue to be prohibited. These safeguards would reasonably ensure that DMM transactions bear a reasonable relationship to overall market conditions and that DMMs cannot destabilize, inappropriately influence or manipulate a security going into the close. In addition, the prohibition on Aggressing Transactions that would create a new consolidated high or low price of the trading day would maintain a bright-line rule that prohibits DMM transactions that aggressively take liquidity leading into the close. While the period during which such Aggressing Transactions would be shorter than under the current rule, the Exchange believes that the shorter time period reflects today's faster, more electronic markets, where trades and quotes are measured in microseconds, not minutes. Further, the proposed prohibition would be stricter than under current rules because DMMs would be prohibited from engaging in any Aggressing Transaction that creates a new consolidated high or low price for the day, even if such trade were a liquidating transaction.

Accordingly, the proposed rule change is designed to address the potential risk of DMM trading destabilizing the market leading into the close in today's market conditions, while at the same time revising which transactions would be prohibited to promote DMMs quoting more aggressively in their assigned securities. The Exchange therefore believes that the proposed amendments to the types of transactions that would be prohibited would remove impediments to and perfect the mechanism of a free and open market and a national market system because DMMs would now be able to quote more aggressively in their assigned securities during the period for prohibited transactions.

Moreover, the numerous obligations currently imposed by Rule 104 would in no way be altered or diminished by the proposal. The Exchange does not believe that the balance of benefits and obligations under Rule 104 would be impacted by this proposed rule change. DMMs would continue to be prohibited from engaging in specified transactions leading into the close. The Exchange is simply proposing to modernize this obligation to reflect the realities of today's trading environment. Moreover, the proposed rule would carry over the requirement that all DMM transactions be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in the particular stock. These safeguards would reasonably ensure that DMM transactions bear a reasonable relationship to overall market conditions and that DMMs cannot destabilize, inappropriately influence or manipulate a security going into the close. For the same reasons, the proposed prohibition would not alter or disrupt the balance between DMM benefits and obligations of being an Exchange DMM.

Finally, revising the requirements for DMM transactions based on the type of DMM trading rather than the DMM's position would remove impediments to and perfect the mechanism of a free and open market and a national market system by simplifying and streamlining the requirements for DMM transactions.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange proposes amendments to the rule governing DMM obligations to simplify and streamline the requirements for DMM transactions. The Exchange believes that the proposal would promote competition by allowing DMMs to quote more aggressively in the final minutes of trading, thereby permitting DMMs to remain competitive with other traders both on the Exchange and on other trading venues. Without the proposed change, the Exchange believes that in the final ten minutes of trading, DMMs are at a competitive disadvantage because they are restricted

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

from engaging in quoting activity that does not reach across the market, but that could result in a transaction that is a new high or low on the Exchange, but is not a new consolidated high or low price. The Exchange believes that the proposal is pro-competitive because revising which transactions would be prohibited would promote DMM quoting more aggressively in their assigned securities, thereby enhancing the ability of DMMs to meet their affirmative obligation under Rule 104. Similarly, shortening the time period restricting DMM trading, in addition to being more appropriate for the current high-speed trading environment, would provide DMMs with more time to engage in liquidating transactions before the prohibition begins, thereby enhancing DMM market making in the final minutes of trading. The Exchange further believes that its proposed rules governing DMMs would not impose any burden on competition that is not necessary or appropriate because the proposed rules are designed to foster a fair and orderly marketplace without diminishing the balance of benefits and obligations under Rule 104 or altering or diminishing the numerous obligations currently imposed by Rule 104 on DMMs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2018–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2018–34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2018–34 and should be submitted on or before September 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Brent J. Fields,

Secretary.

[FR Doc. 2018–17630 Filed 8–15–18; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83819; File No. SR–ICC–2018–009]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to ICC's Treasury Operations Policies and Procedures

August 10, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4,[2] notice is hereby given that on July 31, 2018, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed rule change is to revise the ICC Treasury Operations Policies and Procedures (''Treasury Policy''). These revisions do not require any changes to the ICC Clearing Rules (''Rules'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

(a) Purpose

ICC proposes revisions to its Treasury Policy. ICC believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

is responsible. The proposed revisions are described in detail as follows.

ICC proposes to update the ICC Treasury Policy in light of the exemptive order [3] (the ''Order'') that was issued by the Commodity Futures Trading Commission (''CFTC'') permitting ICC to invest, subject to certain conditions, Euro-denominated customer funds in French and German sovereign debt. ICC was prohibited from investing customer funds in foreign sovereign debt by CFTC Regulation 1.25,[4] which does not permit such investments. As such, ICC is proposing changes to its Treasury Policy to permit its Treasury Department to directly invest both US Dollar- (''USD'') and Euro-denominated Guaranty Fund (''GF'') and margin cash posted by Clearing Participants (''CPs'') (''house origin cash''); to invest Euro-denominated cash posted by CPs for their margin requirements related to client positions (''customer origin cash'') in French and German sovereign debt; to revise its Euro investment guidelines to limit investment to French and German sovereign debt; and to make additional clarification and clean-up changes throughout the document to enhance readability.

ICC proposes to revise the 'Funds Management' section. ICC proposes clarifying changes that move reference to its default position of holding USD-denominated house origin cash in its Federal Reserve Account from the 'Investment Strategy' subsection to the amended 'ICC Investment of Guaranty Fund and Margin Cash' subsection, which is separated into USD and Euro. ICC proposes clarifying language within the proposed 'USD' subsection to note that, if ICC is unable to deposit house origin cash in its Federal Reserve Account, ICC's Treasury Department may hold or invest such USD cash as specified within the Treasury Policy. ICC also proposes a revision to correct a typographical error by adding the verb ''has'' to the phrase ''ICE Clear Credit arrangements.''

In the proposed 'Euro' subsection, ICC proposes to permit its Treasury Department to directly invest Euro-denominated house origin cash. Under the current ICC Treasury Policy, the ICC Treasury Department is only permitted to directly invest USD-denominated house origin cash. Specifically, ICC proposes to state that Euro-denominated house origin cash will be (i) held in bank deposits, (ii) allocated to outside investment managers, or (iii) directly held/invested by the ICC Treasury Department pursuant to the Euro investment guidelines in the appendix. Under the proposed changes, ICC's Treasury Department is permitted to directly execute the Euro investment guidelines.

In the 'Outside Investment Management of Guaranty Fund and Margin Cash' subsection, ICC proposes removing reference to a specific outside investment manager to reflect ICC's engagement of multiple outside investment managers. ICC also proposes to correct certain typographical errors in this section to improve readability, including removing the indefinite article ''an'' in the phrase ''an alternative or additional outside investment managers'', adding the definite article ''the'' to the phrase ''Investment Manager's investment'', and changing ''Directory of Treasury'' to ''Director of Treasury'' in a footnote.

ICC proposes removing language from the 'Treasury Management for Client Business' section that references the introduction of client trades to clarify that ICC has already commenced client clearing.

ICC proposes the new 'Investment of Client Margin Cash' subsection within the 'Treasury Management for Client Business' section, which specifically relates to ICC's investment of customer origin cash. Currently, the ICC Treasury Policy prohibits ICC from investing customer origin cash in foreign sovereign debt due to CFTC Regulation 1.25,[5] which does not permit such investments. In light of the CFTC's Order,[6] ICC proposes to state that it will invest customer origin cash in compliance with CFTC Regulation 1.25,[7] including any applicable exemptive orders and including, without limitation, the conditions in CFTC Regulation 1.25 [8] related to the investment of customer origin cash in non-U.S. sovereign debt.

ICC proposes revisions to the Euro investment guidelines appendix. ICC proposes to include a footnote, for clarity, stating that its Treasury Department can directly execute the Euro investment guidelines. ICC also proposes to extend the Euro investment guidelines to ICC's segregated CFTC Cleared Swaps Customer initial margin portfolio. ICC's Euro investment guidelines provide for the investment of Euro cash in overnight reverse repurchase (''repo'') transactions with high quality sovereign debt as collateral. If 100% of the allocated cash cannot be placed in overnight reverse repo, backup investments will be in term reverse repo and then direct investment in high quality sovereign debt. Under the current Euro investment guidelines, investment in reverse repo and foreign sovereign debt is utilized only with respect to house origin cash and not customer origin cash pursuant to CFTC regulation. Given the CFTC's Order [9] that allows ICC to invest Euro-denominated customer funds in French and German sovereign debt, ICC proposes to make its investment policies for Euro-denominated cash applicable to both customer origin and house origin cash. ICC further proposes to make the Euro investment guidelines uniform for both customer origin and house origin cash. Specifically, ICC proposes to revise the Euro investment guidelines to limit permissible investment, both directly and through reverse repo, to French and German sovereign debt given the comparability of French and German sovereign debt to U.S. government securities in terms of creditworthiness, liquidity, and volatility.[10] With respect to customer origin cash, the proposed changes require that investments comply with any applicable conditions or restrictions set forth in CFTC Regulation 1.25 [11] including any applicable exemptive orders and allow the use of term reverse repo subject to a certain restriction. Additionally, should conditions change so that the French or German sovereign debt no longer meets the conditions or restrictions of CFTC Regulation 1.25,[12] the outside investment manager shall discontinue making any additional investments in such sovereign debt issuers.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act [13] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; and to comply with the

[3] 83 FR 35241 (July 25, 2018).

[4] 17 CFR 1.25.

[5] *Id.*

[6] 83 FR 35241 (July 25, 2018).

[7] 17 CFR 1.25.

[8] *Id.*

[9] 83 FR 35241 (July 25, 2018).

[10] *See* ICE Clearing House Application for Exemptive Order (June 22, 2017) for a discussion of the suitability of French and German sovereign debt, *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@requestsand actions/documents/ifdocs/icedcos4cappl6-22-17.pdf.*

[11] 17 CFR 1.25.

[12] *Id.*

[13] 15 U.S.C. 78q–1(b)(3)(F).

provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F),[14] because ICC believes that the proposed rule changes will promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, and contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible. The proposed changes permitting ICC to invest Euro-denominated customer funds in French and German sovereign debt are designed to further ensure the reliable investment of assets in ICC's control with minimal risk. Euro-denominated customer fund balances must be held in unsecured bank demand deposits accounts, exposing ICC and its CPs and their customers to the credit risk of such banks. ICC believes that the proposed changes, given the CFTC's Order,[15] to invest Euro-denominated customer funds in French and German sovereign debt would provide for an important alternative for the protection of customer funds. Moreover, allowing the Treasury Department to directly invest both USD and Euro-denominated house origin cash will continue to ensure the reliable investment of assets in ICC's control with minimal risk by allowing the Treasury Department to directly execute the Euro investment guidelines, thereby facilitating ICC's ability to promptly and accurately clear and settle its cleared CDS contracts and enhancing ICC's ability to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible. The clarification and clean-up changes that enhance readability will further ensure that the documentation of ICC's Treasury Policy remains up-to-date, clear, and transparent. As such, the proposed rule changes are designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions and to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible within the meaning of Section 17A(b)(3)(F) of the Act.[16]

[14] *Id.*

[15] 83 FR 35241 (July 25, 2018).

[16] 15 U.S.C. 78q–1(b)(3)(F).

In addition, the proposed revisions to the ICC Treasury Policy are consistent with the relevant requirements of Rule 17Ad–22.[17] Rule 17Ad–22(b)(3)[18] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions. The proposed changes to the Euro investment guidelines that limit investment to French and German sovereign debt and apply to both house origin and customer origin cash serve to preserve principle and maintain liquidity of funds as such debt has credit, liquidity, and volatility characteristics that are comparable to U.S. government securities, thereby ensuring that ICC continues to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions, consistent with the requirements of Rule 17Ad–22(b)(3).[19]

Rule 17Ad–22(d)(3)[20] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold assets in a manner that minimizes risk of loss or of delay in its access to them and to invest assets in instruments with minimal credit, market, and liquidity risks. ICC believes that the proposed changes allowing ICC to invest Euro-denominated customer funds in French and German sovereign debt and allowing the Treasury Department to directly invest both USD and Euro-denominated house origin cash and directly execute the Euro investment guidelines will enhance ICC's ability to hold assets in a manner that minimizes risk of loss or of delay in its access to them by serving as an important alternative for the protection of funds. Additionally, the proposed revisions to the Euro investment guidelines that limit investment to French and German sovereign debt for house origin cash allow ICC to continue to ensure to hold assets in a manner that minimizes risk of loss or of delay in its access to them and to invest assets in instruments with minimal credit, market, and liquidity risks given the comparability of French and German sovereign debt to U.S. government securities in terms of creditworthiness, liquidity, and volatility. Such changes are therefore reasonably designed to meet the requirements of Rule 17Ad–22(d)(3).[21]

[17] 17 CFR 240.17Ad–22.

[18] 17 CFR 240.17Ad–22(b)(3).

[19] *Id.*

[20] 17 CFR 240.17Ad–22(d)(3).

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule changes would have any impact, or impose any burden, on competition. The proposed changes to ICC's Treasury Policy will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule changes impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove 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, security-based swap submission, or advance notice 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–ICC–2018–0 on the subject line.

[21] *Id.*

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–ICC–2018–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, security-based swap submission, or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission, or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2018–009 and should be submitted on or before September 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Brent J. Fields,

Secretary.

[FR Doc. 2018–17627 Filed 8–15–18; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83828; File No. SR–NYSEARCA–2018–58]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges To Introduce a New Pricing Tier

August 10, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 1, 2018, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges ("Fee Schedule") to introduce a new pricing tier, Retail Order Step-Up Tier 2. The Exchange proposes to implement the fee change effective August 1, 2018. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule, as described below, to introduce a new pricing tier, Retail Order Step-Up Tier 2, for securities with a per share price of $1.00 or above.

The Exchange currently has a Retail Order Step-Up Tier pursuant to which ETP Holders, including Market Makers, that execute an ADV of Retail Orders[4] with a time-in-force designation of Day that add or remove liquidity during the month that is an increase of 0.12% or more of the U.S. CADV above their April 2018 ADV taken as a percentage of U.S. CADV receive a credit of $0.0033 per share when such orders provide liquidity to the book during the month in Tape A, Tape B and Tape C Securities. Retail Orders with a time-in-force designation of Day that remove liquidity from the Book are not charged a fee.[5]

To encourage even greater participation from ETP Holders and promote additional liquidity in Retail Orders, the Exchange proposes a new pricing tier—Retail Order Step-Up Tier 2.[6]

As proposed, a new Retail Order Step-Up Tier 2 credit of $0.0035 per share for Retail Orders that provide displayed liquidity during the month in Tape A, Tape B and Tape C Securities would apply to ETP Holders, including Market Makers, that provide liquidity an average daily share volume per month of 1.10% or more of the U.S. CADV, and execute an ADV of Retail Orders with a time-in-force designation of Day that add or remove liquidity during the month that is an increase of 0.35% or more of the U.S. CADV above their April 2018 ADV taken as a percentage of U.S. CADV. Retail Orders with a time-in-force designation of Day that remove liquidity from the Book will not be charged a fee.

Additionally, if an ETP Holder qualifies for the new Retail Order Step-

[4] A Retail Order is an agency order that originates from a natural person and is submitted to the Exchange by an ETP Holder, provided that no change is made to the terms of the order to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. *See* Securities Exchange Act Release No. 67540 (July 30, 2012), 77 FR 46539 (August 3, 2012) (SR–NYSEArca–2012–77).

[5] *See* Securities Exchange Act Release No. 83268 (May 17, 2018), 83 FR 23983 (May 23, 2017) (SR–NYSEArca–2018–34).

[6] The Exchange proposes a non-substantive amendment to the Fee Schedule to rename the current Retail Order Step-Up Tier as "Retail Order Step-Up Tier 1."

Up Tier 2, that ETP Holder would also receive a credit of $0.0035 per share for orders (not just Retail Orders) that provide displayed liquidity to the order book in Tape C Securities, and an incremental credit of $0.0002 per share for orders that provide non-displayed liquidity [7] to the order book in Tape C Securities. The proposed incremental credit would be in addition to the ETP Holder's or Market Maker's Tiered or Basic Rate credit(s). Such ETP Holders and Market Makers would also pay a fee of $0.0027 per share for orders that take liquidity from the order book in Tape C Securities.

For all other fees and credits, tiered or basic rates apply based on a firm's qualifying levels.

For example, assume an ETP Holder averages 1 million shares in Retail Orders with a time-in-force designation of Day that add or remove liquidity per day in April, or 0.015% of U.S. CADV, where U.S. CADV was 6.6 billion shares.

If that ETP holder then averages 24.25 million shares in Retail Orders with a time-in-force designation of Day that add or remove liquidity in the billing month, or 0.367% of U.S. CADV, where U.S. CADV was also 6.6 billion shares, that ETP Holder would qualify for the proposed Retail Order Step-Up Tier 2 because it would have met the requirement of the proposed new pricing tier, *i.e.,* an increase of at least 0.35% of the U.S. CADV over the ETP Holder's April 2018 ADV taken as a percentage of U.S. CADV, or 0.352% (0.367% in the billing month over 0.015% in the baseline month).

Also assume that same ETP holder averages 5 million shares in Retail Orders that remove liquidity in Tape A Securities, of which 100,000 shares are in Retail Orders with a time-in-force designation of Day. As a result, 4.9 million shares in Retail Orders that remove liquidity would be subject to the Tape A fee for removing liquidity of $0.0030 per share while the 100,000 shares in Retail Orders with a time-in-force designation of Day would not be charged a fee.

Further assume that the same ETP Holder qualified for the MPL Order credit of $0.0020 per share for MPL Orders that add liquidity in Tape C Securities, a Tracking Order Tier 1 credit of $0.0015 per share, and no fee or credit for Limit Non-Displayed Orders. That ETP holder would receive in Tape C Securities a credit for $0.0022 per share for MPL Orders that add liquidity ($0.0020 + $0.0002 Retail Order Step-Up Tier 2 credit), a credit of $0.0017 per share for Tracking Orders ($0.0015 + $0.0002 Retail Order Step-Up Tier 2 credit) and a credit of $0.0002 per share for Limit Non-Displayed Orders (no fee/credit + $0.0002 Retail Order Step-Up Tier 2 credit).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes it is reasonable to add the proposed Retail Order Step-Up Tier 2 because the Exchange believes it would encourage participation from a greater number of ETP Holders, which would promote additional liquidity in Retail Orders. In this regard, an ETP Holder that does not qualify for the proposed higher credit and lower fees could still be eligible for the pricing for its Retail Orders that provide liquidity under the current Retail Order Tier, the Retail Order Step-Up Tier 1, or under Basic Rates. The proposed new Retail Order Step-Up Tier 2 would create an added financial incentive for ETP Holders to bring additional retail flow to a public market. The proposed new pricing tier is also reasonable because it would reduce the costs of ETP Holders that represent retail flow and potentially also reduce costs to their customers.

The Exchange believes that the proposed modification to adopt an incremental credit and lower take fee for Tape C Securities is reasonable, fair, and equitable. The proposed credit is designed to encourage increased trading of Retail Orders by ETP Holders and Market Makers in Tape C Securities while the decreased fee to ETP Holders and Market Makers would further incent liquidity to the Exchange and provide an incentive to ETP Holders to provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange further believes the proposed incremental credit is reasonable and appropriate in that it is based on the amount of business transacted on the Exchange. The Exchange believes offering the same credit of $0.0035 per share in Tape C Securities for orders that provide displayed liquidity as Retail Orders that provide displayed liquidity is reasonable and equitable as it would provide an incentive to ETP Holders to provide displayed liquidity that supports the quality of price discovery, improves quoting, and promotes market transparency. The Exchange believes the proposed incremental credit for adding non-displayed liquidity is also reasonable because it will encourage liquidity and competition in Tape C securities traded on the Exchange. The Exchange believes charging lower fees for orders in Tape C Securities that remove liquidity from the order book will also incentivize ETP Holders to increase the orders sent to the Exchange. The Exchange believes that recalibrating the fees for taking liquidity will attract additional order flow and liquidity to the Exchange, thereby contributing to price discovery on the Exchange and benefiting investors generally.

The Exchange also believes the proposed Retail Order Step-Up Tier 2 is equitable and not unfairly discriminatory because it is available to all ETP Holders and Market Makers on an equal basis and provides discounts that are reasonably related to the value to the Exchange's market quality associated with higher volumes. The Exchange does not believe that it is unfairly discriminatory to offer increased credits and lower fees to ETP Holders and Market Makers as these participants would be subject to additional volume requirements.

The Exchange believes that it is reasonable that only Retail Orders with a time-in-force designation of Day that add or remove liquidity would count toward qualifying for the Retail Order Step-Up Tier 2. This would largely result in the type of orders to which the corresponding credit applies being the same as the volume that counts toward qualification—*i.e.,* only Retail Orders with a time-in-force designation of Day. The Exchange believes that the proposed requirements to provide liquidity of an average daily share volume per month of 1.10% or more of the U.S. CADV and execute an ADV of Retail Orders with a time-in-force of Day that add or remove liquidity during the month that is an increase of 0.35% or more of U.S. CADV above the ETP Holder's April 2018 ADV taken as a percentage of U.S. CADV are reasonable because they are within ranges that the Exchange believes would continue to incentivize ETP Holders to submit Retail Orders to the Exchange in order to qualify for the proposed credit.

The Exchange believes that the proposed rule change is equitable and

[7] The following orders provide non-displayed liquidity to the order book: Limit Non-Displayed Order, Mid-Point Liquidity (''MPL'') Order and Tracking Order. *See* Rule 7.31–E(d)(2), (3) and (4).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

not unfairly discriminatory because maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. This aspect of the proposed rule change also is consistent with the Act because all similarly situated ETP Holders would pay the same rate, as is currently the case, and because all ETP Holders would be eligible to qualify for the rates by satisfying the related threshold, where applicable. Furthermore, the submission of Retail Orders is optional for ETP Holders, in that an ETP Holder could choose whether to submit Retail Orders and, if it does, the extent of its activity in this regard.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[10] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed rule change would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders and Market Makers. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed rule change is consistent with the Act because it strikes an appropriate balance between fees and credits, which will encourage submission of orders to the Exchange, thereby promoting 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 or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and to attract order flow to the Exchange. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[11] of the Act and subparagraph (f)(2) of Rule 19b–4[12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[13] 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–NYSEARCA–2018–58 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–NYSEARCA–2018–58. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2018–58 and should be submitted on or before September 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

[FR Doc. 2018–17636 Filed 8–15–18; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83825; File No. SR–FINRA–2018–028]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Security Futures Risk Disclosure Statement

August 10, 2018.

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 August 9, 2018, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Section 6.1 (Protections for Securities Accounts) of the 2002 security futures risk disclosure statement (''2002 Statement'' or ''Statement'')[4] to reflect that the Securities Investor Protection Corporation's (''SIPC'') cash limit protection for customers is $250,000, and make one technical change. The proposed rule change is related to File No. SR–FINRA–2018–024, which sets forth additional updates to the 2002 Statement.

The proposed updated Statement is attached as Exhibit 3a. The proposed supplement pertaining to changes to the specified paragraph under Section 6.1, the proposed technical change to Section 5.2, as well as changes to the paragraphs specified in File No. SR–FINRA–2018–024, is attached as Exhibit 3b.[5]

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 7, 2018, FINRA filed with the SEC File No. SR–FINRA–2018–024 to update the 2002 Statement to: (1) Incorporate prior supplements pertaining to Sections 5.2 (Settlement by Physical Delivery) and 8.1 (Corporate Events); (2) make a technical change to Section 5.2 to reflect that the normal clearance and settlement cycle for securities transaction is now two business days; (3) amend Section 6.1 (Protections for Securities Accounts) to reflect the current address for SIPC; and (4) make other non-substantive and technical changes.[6] In addition to that recent set of updates to the 2002 Statement, FINRA is proposing to amend Section 6.1 to reflect the correct amount of SIPC coverage. The third paragraph under Section 6.1 currently reads:

> SIPC coverage is limited to $500,000 per customer, including up to $100,000 for cash. For example, if a customer has 1,000 shares of XYZ stock valued at $200,000 and $10,000 cash in the account, both the security and the cash balance would be protected. However, if the customer has shares of stock valued at $500,000 and $100,000 in cash, only a total of $500,000 of those assets will be protected.

The Dodd-Frank Wall Street Reform and Consumer Protection Act[7] amended the Securities Investor Protection Act of 1970 (''SIPA'') to raise the ''standard maximum cash advance amount'' available to satisfy customer cash claims in a SIPA liquidation proceeding from $100,000 to $250,000 per customer.[8] To reflect the current limit of protection for cash claims under SIPA, FINRA is proposing to amend the third paragraph of Section 6.1 to read:

> SIPC coverage is limited to $500,000 per customer, including up to $250,000 for cash. For example, if a customer has 1,000 shares of XYZ stock valued at $200,000 and $10,000 cash in the account, both the security and the cash balance would be protected. However, if the customer has shares of stock valued at $500,000 and $250,000 in cash, only a total of $500,000 of those assets will be protected.

In addition, FINRA is proposing to incorporate one technical change into the proposed updated Statement.[9]

Currently, the 2002 Statement, to which 2010 and 2014 supplements are appended, is posted on FINRA's website[10] and the 2010 and 2014 supplements are also posted on the website[11] as separate documents to facilitate a member's compliance with Rule 2370(b)(11)(A).[12] FINRA intends to replace the 2002 Statement currently posted on FINRA's website with an updated Statement that incorporates into the main body of the document the cumulative changes made to date, as well as the proposed amendment to the third paragraph of Section 6.1 and the one technical change described herein.[13]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 46862 (November 20, 2002), 67 FR 70993 (November 27, 2002) (Order Approving File No. SR–NASD–2002–129). *See also* Securities Exchange Act Release No. 46613 (October 7, 2002), 67 FR 64176 (October 17, 2002) (Notice of Filing and Effectiveness of File No. SR–NFA–2002–05).

[5] The Commission notes that these exhibits are attached as exhibits to the filing.

[6] *See* Securities Exchange Act Release No. 83407 (June 11, 2018), 83 FR 28045 (June 15, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2018–024).

[7] Public Law 111–203, 124 Stat. 1376 (2010).

[8] 15 U.S.C. 78fff–3. Effective January 1, 2017, and for the five years immediately thereafter, the Board of Directors of SIPC has determined that the maximum amount of the advance to satisfy a claim for cash will remain at the current level of $250,000 per customer. *See* Securities Exchange Commission, Release No. SIPA–174 (February 22, 2016), 81 FR 9561 (February 25, 2016).

[9] Specifically, the proposed rule change would remove the quotes around the acronym that defines the National Securities Clearing Corporation in Section 5.2.

[10] *See* Security Futures Risk Disclosure Statement brochure, *http://www.finra.org/sites/default/files/Security_Futures_Risk_Disclosure_Statement.pdf,* posted in its current design in 2016.

[11] *See* FINRA's Security Futures Topic Page, *http://www.finra.org/industry/security-futures* (last visited August 9, 2018).

[12] *See Information Notice,* September 7, 2010 (August 2010 Supplement to the Security Futures Risk Disclosure Statement); *see also Regulatory Notice* 14–24 (May 2014) (stating, a member may separately distribute new supplements to a customer that enters into a securities futures transaction and that a member is not required to redistribute the entire Statement or the earlier supplement).

[13] The Statement, in its original language approved by the SEC in 2002, would remain accessible on FINRA's website for those members whose customers may still refer to the original version of the Statement. The Statement, however, would bear a notation that an updated version of the Statement, which incorporates the paragraphs

Continued

FINRA is also in the process of creating a single, integrated supplement that aggregates the changes from File No. SR–FINRA–2018–024 and the updates described in this proposed rule change (''2018 supplement''). The 2018 supplement would appear on FINRA's website as a separate document to continue to afford members with the flexibility to comply with the requirements of Rule 2370(b)(11)(A) by separately distributing the new supplement to customers who have already received the 2002 Statement.[14]

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so that FINRA can implement the proposed rule change on September 5, 2018.[15]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[16] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that updating the Statement to incorporate all supplements into the main body will help to accurately inform customers of the characteristics and risks of security futures. The proposed updated Statement would also reflect that SIPC's current cash limit protection for customers is $250,000, increased from $100,000 in 2010.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. While FINRA recognizes that there may be a burden associated with the distribution of the proposed updated Statement or 2018 supplement, FINRA believes that any such burden would be outweighed by the benefit to customers of accurately disclosing the characteristics and risks of security futures. FINRA also believes that any burden will be minimal because firms currently have an existing obligation to deliver each new (*i.e.,* updated) Statement or supplement to customers, and may electronically transmit documents that they are required to furnish to customers under FINRA rules, including the proposed updated Statement or 2018 supplement, provided firms adhere to the standards contained in the Commission's May 1996 and October 1995 releases on electronic delivery,[17] and as discussed in *Notice to Members* 98–3.[18] Firms also may transmit the proposed updated Statement or 2018 supplement to customers through the use of a hyperlink, provided that customers have consented to electronic delivery.[19]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6)[22] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[23] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposed changes can be implemented on September 5, 2018. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the implementation date of the proposed changes to coincide with the implementation date of other changes that will be made to the Statement. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[24]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2018–028 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2018–028. 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

specified in the proposed integrated supplement, is available.

[14] The 2010 and 2014 supplements would remain accessible on FINRA's website with a notation that these paragraphs, as updated, appear in the 2018 supplement.

[15] FINRA intends to announce the September 5, 2018 implementation date in an upcoming *Regulatory Notice* that will also establish September 5, 2018 as the implementation date for other changes to the Statement. *See* Securities Exchange Act Release No. 83407 (June 11, 2018), 83 FR 28045 (June 15, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2018–024).

[16] 15 U.S.C. 78*o*–3(b)(6).

[17] *See* Securities Act Release No. 7288 (May 9, 1996), 61 FR 24644 (May 15, 1996) and Securities Act Release No. 7233 (October 6, 1995), 60 FR 53458 (October 13, 1995). *See also* Securities Act Release No. 7856 (April 28, 2000), 65 FR 25843 (May 4, 2000) (affirming that the framework for electronic delivery established in the 1995 and 1996 releases continues to work well in today's technological environment).

[18] *See Notice to Members* 98–3 (January 1998).

[19] *See Information Notice,* September 7, 2010 (August 2010 Supplement to the Security Futures Risk Disclosure Statement).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires FINRA to give the Commission written notice of FINRA's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2018–028, and should be submitted on or before September 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–17631 Filed 8–15–18; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 10506]

Notice of Public Meeting

The Department of State will conduct an open meeting at 10:30 a.m. on Friday, September 14, 2018, in Room 5Y23–21 of the Douglas A. Munro Coast Guard Headquarters Building at St. Elizabeth's, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593. The primary purpose of the meeting is to prepare for the fifth Session of the International Maritime Organization's (IMO) Sub-Committee on Implementation of IMO Instruments (III 5) to be held at the IMO headquarters, London, United Kingdom, on September 24–28, 2018.

The agenda items to be considered include:

—Decisions of other IMO bodies;
—Consideration and analysis of reports on alleged inadequacy of port reception facilities;
—Lessons learned and safety issues identified from the analysis of marine safety investigation reports;
—Measures to harmonize port state control (PSC) activities and procedures worldwide;
—Identified issues related to the implementation of IMO instruments from the analysis of PSC data;
—Analysis of consolidated audit summary reports;
—Updated survey guidelines under the Harmonized System of Survey and Certification (HSSC);
—Non-exhaustive list of obligations under the instruments relevant to the IMO Instruments Implementation Code (III Code); and
—Unified interpretation of provisions of IMO safety, security, and environment related conventions.
—Review the Model Agreement for the authorization of recognized organizations acting on behalf of the Administration.

The public meeting will focus on answering any questions from the public that are directly related to the meeting documents submitted for this meeting. The public may attend this meeting up to the seating capacity of the room. However, due to the size of the room and security protocols at Coast Guard Headquarters, members of the public are encouraged to participate via teleconference. To access the teleconference line or request physical access to the meeting, participants should contact the meeting coordinator, Mr. Christopher Gagnon, by email at *christopher.j.gagnon@uscg.mil* or by phone at (202) 372–1231. Physical access to the meeting requires that all attendees respond to the meeting coordinator not later than September 5, 2018, seven working days prior to the meeting. Responses made after September 5, 2018 might result in not being able to participate in person at the meeting. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Coast Guard Headquarters building. The building is accessible by public transportation or taxi.

Joel C. Coito,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2018–17701 Filed 8–15–18; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2018–0027]

2018 Special 301 Out-of-Cycle Review of Notorious Markets: Comment Request

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) requests written comments that identify online and physical markets based outside the United States that should be included in the 2018 Notorious Markets List (List). Conducted under the auspices of the Special 301 program, the List identifies online and physical marketplaces that reportedly engage in and facilitate substantial copyright piracy and trademark counterfeiting. In 2010, USTR began publishing the Notorious Markets List separately from the annual Special 301 Report as an ''Out-of-Cycle Review.''

DATES:

October 1, 2018 at midnight EST: Deadline for submission of written comments.

October 15, 2018 at midnight EST: Deadline for submission of rebuttal comments and other information USTR should consider during the review.

ADDRESSES: You should submit written comments through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments in section III below. For alternatives to online submissions, please contact USTR at *Special301@ustr.eop.gov* before transmitting a comment and in advance of the relevant deadline.

FOR FURTHER INFORMATION CONTACT: Sung Chang, Director for Innovation and Intellectual Property, at *special301@ustr.eop.gov.* You can find information about the Special 301 Review, including the Notorious Markets List, at *www.ustr.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The United States is concerned with trademark counterfeiting and copyright piracy on a commercial scale because they cause significant financial losses for right holders, legitimate businesses and governments, undermine critical U.S. comparative advantages in innovation and creativity to the detriment of American workers, and potentially pose significant risks to consumer health and safety as well as privacy and security. The Notorious

[25] 17 CFR 200.30–3(a)(12).

Markets List identifies select online and physical marketplaces that reportedly engage in or facilitate substantial copyright piracy and trademark counterfeiting.

Beginning in 2006, USTR identified notorious markets in the annual Special 301 Report. In 2010, pursuant to the Administration's 2010 Joint Strategic Plan on Intellectual Property Enforcement, USTR announced that it would publish the List as an Out-of-Cycle Review, separate from the annual Special 301 Report. USTR published the first List in February 2011. USTR develops the annual List based upon public comments solicited through the **Federal Register** and in consultation with other Federal agencies that serve on the Special 301 Subcommittee of the Trade Policy Staff Committee.

The United States encourages owners and operators of markets reportedly involved in piracy and counterfeiting to adopt business models that rely on the licensed distribution of legitimate content and products and to work with right holders and enforcement officials to address infringement. USTR also encourages responsible government authorities to intensify their efforts to investigate reports of piracy and counterfeiting in such markets, and to pursue appropriate enforcement actions. The List does not purport to reflect findings of legal violations, nor does it reflect the United States Government's analysis of the general intellectual property (IP) protection and enforcement climate in the country or countries concerned. For an analysis of the IP climate in particular countries, please refer to the annual Special 301 Report, published each spring no later than 30 days after USTR submits the National Trade Estimate to Congress.

II. Public Comments

USTR invites written comments concerning examples of online and physical notorious markets, including foreign trade zones that allegedly facilitate substantial trademark counterfeiting and copyright piracy. To facilitate the review, written comments should be as detailed as possible. Comments must clearly identify the market and the reasons why the commenter believes that the market should be included in the List. Commenters should include the following information, as applicable:

- If a physical market, the market's name and location, *e.g.,* common name, street address, neighborhood, shopping district, city, etc., and the identity of the principal owners/operators.
- If an online market:
  - The domain name(s) past and present, available registration information, and name(s) and location(s) of the hosting provider(s) and operator(s).
  - Information on the volume of internet traffic associated with the website, including number of visitors and page views, average time spent on the site, estimate of the number of infringing goods offered, sold, or traded and number of infringing files streamed, shared, seeded, leeched, downloaded, uploaded, or otherwise distributed or reproduced, and global or country popularity rating (*e.g.,* Alexa rank).
  - Revenue sources such as sales, subscriptions, donations, upload incentives, or advertising and the methods by which that revenue is collected.
- Whether the market is owned, operated, or otherwise affiliated with a government entity.
- Types of counterfeit or pirated products or services sold, traded, distributed, or otherwise made available at that market.
- Volume of counterfeit or pirated goods or services or other indicia of a market's scale, reach, or relative significance in a given geographic area or with respect to a category of goods or services.
- Estimates of economic harm to right holders resulting from the piracy or counterfeiting and a description of the methodology used to calculate the harm.
- Whether the volume of counterfeit or pirated goods or estimates of harm has increased or decreased from previous years, and an approximate calculation of that increase or decrease for each year.
- Whether the infringing goods or services sold, traded, distributed, or made available pose a risk to public health or safety.
- Any known contractual, civil, administrative, or criminal enforcement activity against the market and the outcome of that enforcement activity.
- Additional actions taken by right holders against the market such as takedown notices, requests to sites to remove URLs or infringing content, cease and desist letters, warning letters to landlords and requests to enforce the terms of their leases, requests to providers to enforce their terms of service or terms of use, and the outcome of these actions.
- Additional actions taken by the market owners or operators to remove, limit, or discourage the availability of counterfeit or pirated goods or services, including policies to prevent or remove access to such goods or services, or to disable seller or user accounts, the effectiveness of market policies and guidelines in addressing counterfeiting and piracy, and the level of cooperation with right holders and law enforcement.
- Any other additional information relevant to the review.

III. Submission Instructions

All submissions must be in English and sent electronically via *www.regulations.gov.* To submit comments, locate the docket (folder) by entering the docket number USTR–2018–0027 in the ''Enter Keyword or IP'' window at the *regulations.gov* homepage and click ''Search.'' The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Comment Now!'' You should provide comments in an attached document, and name the file according to the following protocol, as appropriate: Commenter Name or Organization_2018 Notorious Markets OCR. Please include the following information in the ''Type Comment'' field: 2018 Out-of-Cycle Review of Notorious Markets. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) format. If the submission is in another file format, please indicate the name of the software application in the ''Type Comment'' field. For further information on using the *www.regulations.gov* website, please select ''How to Use Regulations.gov'' on the bottom of any page.

Please do not attach separate cover letters to electronic submissions. Instead, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comment submitted electronically that contains business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and would not customarily be released to the public by the submitter. Additionally, the submitter should type

''Business Confidential 2018 Out-of-Cycle Review of Notorious Markets'' in the ''Comment'' field.

Filers of comments containing business confidential information also must submit a public version of their comments. The file name of the public version should begin with the character ''P''. The non-business confidential version will be placed in the docket at *www.regulations.gov* and be available for public inspection.

As noted, USTR strongly urges submitters to file comments through *www.regulations.gov.* You must make any alternative arrangements in advance of the relevant deadline and before transmitting a comment by contacting USTR at *Special301@ustr.eop.gov.*

We will post comments in the docket for public inspection, except business confidential information. You can view comments on the *https://www.regulations.gov* website by entering docket number USTR–2018–0027 in the search field on the home page.

Daniel Lee,

Assistant U.S. Trade Representative for Innovation and Intellectual Property (Acting), Office of the United States Trade Representative.

[FR Doc. 2018–17649 Filed 8–15–18; 8:45 am]

BILLING CODE 3290–F8–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The U.S. Trade Representative (Trade Representative) has determined that appropriate action in this investigation includes the imposition of an additional *ad valorem* duty of 25 percent on products from China classified in the subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) set out in Annex A of this notice. The Trade Representative has further determined to establish a process by which U.S. stakeholders may request that particular products classified within a covered tariff subheading in Annex A be excluded from these additional duties.

DATES: The additional duties set out in Annex A to this notice are effective with respect to products that are entered for consumption, or withdrawn from warehouse for consumption, on or after August 23, 2018.

FOR FURTHER INFORMATION CONTACT: For questions about this action, contact Assistant General Counsel Arthur Tsao or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For questions on customs classification or implementation of additional duties on products identified in Annex A to this Notice, contact *Traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Proceedings in the Investigation

On August 18, 2017, the Office of the U.S. Trade Representative (USTR) initiated an investigation into certain acts, policies, and practices of the Government of China related to technology transfer, intellectual property, and innovation (82 FR 40213).

In a notice published on April 6, 2018 (83 FR 14906), the Trade Representative announced a determination that the acts, policies, and practices of the Government of China covered in the investigation are unreasonable or discriminatory and burden or restrict U.S. commerce. The April 6 notice also invited public comment on a proposed action in the investigation, in the form of an additional 25 percent *ad valorem* duty on products from China classified in a list of 1,333 tariff subheadings, with an annual trade value of approximately $50 billion. As explained in that notice, the level was appropriate both in light of the estimated harm to the U.S. economy, and to obtain elimination of China's harmful acts, policies, and practices.

The public comment process included two opportunities for the submission of written comments, and the opportunity to participate in a public hearing. USTR received thousands of submissions, and held a 3-day public hearing with more than 100 witnesses. The public versions of submissions and a transcript of the hearing are available on *www.regulations.gov* in docket number USTR–2018–0005.

USTR and the interagency Section 301 Committee carefully reviewed the public comments and the testimony from the public hearing. USTR and the Section 301 Committee also carefully reviewed the extent to which the tariff subheadings in the April 6 notice include products containing industrially significant technology, including technologies and products related to China's ''Made in China 2025'' industrial policy program.

Based on this review process, the Trade Representative determined to take an initial action in the investigation, and to consider an additional proposed action. The Trade Representative announced the determination on June 15, 2018, and published a notice on June 20, 2018 (83 FR 28710). The Trade Representative narrowed the proposed list in the April 6 notice to 818 tariff subheadings, with an approximate annual trade value of $34 billion. This initial action became effective on July 6, 2018. The additional proposed action was an additional *ad valorem* duty of 25 percent on products of China classified in 284 tariff subheadings, with an annual trade value of approximately $16 billion, as set forth in Annex C to the June 20 notice. The June 20 notice further explained that including these tariff subheadings in the Section 301 action would maintain the effectiveness of a $50 billion trade action.

The June 20 notice invited public comment on the additional proposed action. USTR requested that commenters address specifically whether imposing increased duties on a particular listed subheading would be practicable or effective to obtain the elimination of China's acts, policies, and practices, and whether maintaining or imposing additional duties on a particular listed product would cause disproportionate economic harm to U.S. interests, including small or medium-sized businesses and consumers.

In response to the notice of additional proposed action, interested persons filed over 700 written submissions. USTR and the Section 301 Committee held a 2-day public hearing on July 24–25, 2018. During the hearing, 82 witnesses provided testimony and responded to questions. Interested parties also had the opportunity to provide rebuttal submissions. The public submissions and a transcript of the hearing are available on *www.regulations.gov* in docket number USTR–2018–0018.

B. Determination on Appropriate Action

USTR and the Section 301 Committee have carefully reviewed the public comments and the testimony from the two-day public hearing. In addition, USTR and the interagency Section 301 Committee have carefully reviewed the extent to which the tariff subheadings in Annex C to the June 20 notice include products containing industrially significant technology, including technologies and products related to the ''Made in China 2025'' program. Based on this review process, the Trade Representative has determined to narrow the proposed tariff subheadings in Annex C to the June 20 notice to 279 tariff subheadings. The annual trade value of the final list remains approximately $16 billion.

Pursuant to sections 301(b), 301(c), and 304(a) of the Trade Act of 1974 (19 U.S.C. 2411(b), 2411(c), and 2414(a)), the Trade Representative determines that appropriate and feasible action in this investigation includes the imposition of an additional *ad valorem* duty of 25 percent on products of China covered in the tariff subheadings listed in Annex A to this notice. Annex B to this notice contains the same list of tariff subheadings, with unofficial descriptions of the types of products covered in each subheading.

In order to implement this determination, effective August 23, 2018, subchapter III of chapter 99 of the HTSUS is modified by Annex A of this notice. Products of China that are provided for in new HTSUS heading 9903.88.02, as established by Annex A of this notice that are entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. Eastern daylight time on August 23, 2018, will be subject to an additional *ad valorem* duty of 25 percent. The rates of duty applicable to products of China that are provided for in new HTSUS heading 9903.88.02 apply in addition to all other applicable duties, fees, exactions, and charges.

The HTSUS note in Annex A, as compared to the HTSUS note in Annex A to the June 20 notice, includes clarifications on the application of the additional duties to goods entered under certain provisions of Chapter 98 and 99 of the HTSUS. Annex C to this notice modifies the HTSUS note in Annex A to the June 20 notice in order to reflect these clarifications. In addition, Annex C makes a conforming amendment to the HTSUS heading in Annex A to the June 20 notice, and makes a technical correction to the HTSUS note in Annex A to the June 20 notice.

Any product listed in Annex A to this notice, except any product that is eligible for admission under 'domestic status' as defined in 19 CFR 146.43, which is subject to the additional duty imposed by this determination, and is admitted into a U.S. foreign trade zone on or after 12:01 a.m. Eastern daylight time on August 23, 2018, only may be admitted as 'privileged foreign status' as defined in 19 CFR 146.41. Such products will be subject upon entry for consumption to any *ad valorem* rates of duty or quantitative limitations related to the classification under the applicable HTSUS subheading.

During the notice and comment process, a number of interested persons asserted that specific products within a particular tariff subheading only were available from China, that imposition of additional duties on the specific products would cause severe economic harm to a U.S. interest, and that the specific products were not strategically important or related to the ''Made in China 2025'' program. In light of such concerns, and pursuant to sections 301(b), 301(c), 304(a), and 307(a) of the Trade Act of 1974 (19 U.S.C. 2411(b), 2411(c), 2414(a), and 2417(a)), the Trade Representative has determined that USTR will establish a process by which U.S. stakeholders may request that particular products classified within an HTSUS subheading listed in Annex A be excluded from these additional duties. The process will be comparable to the exclusion process established in connection with the initial, $34 billion trade action. USTR will publish a separate notice describing the product exclusion process, including the procedures for submitting exclusion requests, and an opportunity for interested persons to submit oppositions to a request.

Robert Lighthizer,

United States Trade Representative.

BILLING CODE 3290–F8–P

ANNEX A

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 23, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by inserting the following new heading 9903.88.02 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled "Heading/Subheading", "Article Description", "Rates of Duty 1-General", respectively:

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	
"9903.88.02	Articles the product of China, as provided for in U.S. note 20(c) to this subchapter and as provided for in the subheadings enumerated in U.S. note 20(d)	The duty provided in the applicable subheading + 25%"		

2. by inserting the following new U.S. note 20(c) to subchapter III of chapter 99 in numerical sequence:

"(c) For the purposes of heading 9903.88.02, products of China, as provided for in this note, shall be subject to an additional 25 percent *ad valorem* rate of duty. The products of China that are subject to an additional 25 percent *ad valorem* rate of duty under heading 9903.88.02 are products of China that are classified in the subheadings enumerated in U.S. note 20(d) to subchapter III. All products of China that are classified in the subheadings enumerated in U.S. note 20(d) to subchapter III are subject to the additional 25 percent *ad valorem* rate of duty imposed by heading 9903.88.02.

Notwithstanding U.S. note 1 to this subchapter, all products of China that are subject to the additional 25 percent *ad valorem* rate of duty imposed by heading 9903.88.02 shall also be subject to the general rates of duty imposed on products of China classified in the subheadings enumerated in U.S. note 20(d) to subchapter III.

Products of China that are classified in the subheadings enumerated in U.S. note 20(d) to subchapter III and that are eligible for special tariff treatment under general note 3(c)(i) to the tariff schedule, or that are eligible for temporary duty exemptions or reductions under subchapter II to chapter 99, shall be subject to the additional 25 percent *ad valorem* rate of duty imposed by heading 9903.88.02.

The additional duties imposed by heading 9903.88.02 do not apply to goods for which entry is properly claimed under a provision of chapter 98 of the HTSUS, except for goods entered under subheadings 9802.00.40, 9802.00.50, and 9802.00.60, and heading 9802.00.80. For subheadings 9802.00.40, 9802.00.50, and 9802.00.60, the additional duties apply to the value of repairs, alterations, or processing performed abroad, as described in the applicable subheading. For heading 9802.00.80, the additional duties apply to the value of the article less the cost or value of such products of the United States, as described in heading 9802.00.80."

Products of China that are provided for in heading 9903.88.02 and classified in one of the subheadings enumerated in U.S. note 20(d) to subchapter III shall continue to be subject to antidumping, countervailing, or other duties, fees, exactions and charges that apply to such products, as well as to the additional 25 percent *ad valorem* rate of duty imposed by heading 9903.88.02."

3. by inserting the following new U.S. note 20(d) to subchapter III of chapter 99 in numerical sequence:

"(d) Heading 9903.88.02 applies to all products of China that are classified in the following 8-digit subheadings:

2710.19.30	3904.50.00	3909.10.00	3917.40.00	3921.12.11
2710.19.35	3904.61.00	3909.20.00	3919.10.10	3921.12.15
2710.19.40	3904.69.10	3909.40.00	3919.10.20	3921.12.19
3403.19.10	3904.69.50	3909.50.10	3919.90.10	3921.12.50
3403.19.50	3904.90.10	3909.50.20	3919.90.50	3921.13.11
3403.99.00	3904.90.50	3909.50.50	3920.10.00	3921.13.15
3811.21.00	3905.12.00	3910.00.00	3920.20.00	3921.13.19
3811.29.00	3905.19.00	3911.10.00	3920.30.00	3921.13.50
3901.10.10	3905.21.00	3911.90.10	3920.43.10	3921.14.00
3901.10.50	3905.29.00	3911.90.15	3920.43.50	3921.19.00
3901.20.10	3905.30.00	3911.90.25	3920.49.00	3921.90.11
3901.20.50	3905.91.10	3911.90.35	3920.51.10	3921.90.15
3901.30.20	3905.91.50	3911.90.45	3920.51.50	3921.90.19
3901.30.60	3905.99.80	3911.90.70	3920.59.10	3921.90.21
3901.90.10	3906.10.00	3911.90.90	3920.59.40	3921.90.25
3901.90.55	3906.90.10	3912.12.00	3920.59.80	3921.90.29
3901.90.90	3906.90.20	3912.20.00	3920.61.00	3921.90.40
3902.10.00	3906.90.50	3912.39.00	3920.62.00	3921.90.50
3902.20.10	3907.10.00	3912.90.00	3920.63.10	7002.20.10
3902.20.50	3907.20.00	3913.90.10	3920.63.20	7308.10.00
3902.30.00	3907.30.00	3913.90.50	3920.69.00	7308.20.00
3902.90.00	3907.40.00	3914.00.20	3920.71.00	7308.90.30
3903.11.00	3907.50.00	3914.00.60	3920.73.00	7308.90.60
3903.19.00	3907.61.00	3916.10.00	3920.79.05	7308.90.70
3903.20.00	3907.69.00	3916.20.00	3920.79.10	7308.90.95
3903.30.00	3907.70.00	3916.90.10	3920.79.50	7614.10.10
3903.90.10	3907.91.20	3916.90.30	3920.91.00	7614.90.20
3903.90.50	3907.91.40	3916.90.50	3920.92.00	8406.82.10
3904.10.00	3907.91.50	3917.21.00	3920.93.00	8407.34.05
3904.21.00	3907.99.20	3917.22.00	3920.94.00	8407.34.35
3904.22.00	3907.99.50	3917.23.00	3920.99.10	8407.90.10
3904.30.20	3908.10.00	3917.29.00	3920.99.20	8407.90.90
3904.30.60	3908.90.20	3917.31.00	3920.99.50	8408.20.10
3904.40.00	3908.90.70	3917.32.00	3921.11.00	8419.60.10

8419.89.10
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8432.31.00
8432.39.00
8432.42.00
8443.99.40
8455.90.40
8464.10.01
8465.95.00
8466.30.80
8473.50.60
8473.50.90
8475.29.00
8483.30.80
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8541.40.60
8542.31.00
8542.32.00
8542.33.00
8542.39.00
8542.90.00
8543.70.45
8543.70.99
8544.49.10
8544.49.20
8544.60.60
8601.20.00
8602.10.00
8605.00.00
8606.10.00
8606.30.00
8606.91.00
8606.92.00
8606.99.01
8607.11.00
8607.19.03
8607.19.30
8607.30.10
8607.30.50
8701.20.00
8701.30.50
8701.91.10
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8701.95.50
8704.90.00
8705.10.00
8705.20.00
8705.90.00
8711.10.00
8711.60.00
8711.90.01
8901.30.00
9001.10.00
9001.20.00
9014.10.90
9025.19.40
9025.19.80
9025.80.10
9027.10.20
9028.10.00
9028.20.00
9028.30.00
9029.20.40
9029.90.80
9030.31.00
9030.32.00
9030.84.00
9030.89.01”

ANNEX B

Note: All products that are classified in the 8-digit headings of the Harmonized Tariff Schedule of the United States (HTS) that are listed in this Annex are covered by the action. The product descriptions that are contained in this Annex are provided for informational purposes only, and are not intended to delimit in any way the scope of the action. In all cases, the formal language in Annex A governs the tariff treatment of products covered by the action. Any questions regarding the scope of particular HTS subheadings should be referred to U.S. Customs and Border Protection. In the product descriptions, the abbreviation "nesoi" means "not elsewhere specified or included".

HTS Subheading	Product Description
2710.19.30	Lubricating oils, w/or w/o additives, fr. petro oils and bitumin minerals (o/than crude) or preps. 70%+ by wt. fr. petro oils
2710.19.35	Lubricating greases from petro oil/bitum min/70%+ by wt. fr. petro. oils but n/o 10% by wt. of fatty acid salts animal/vegetable origin
2710.19.40	Lubricating greases from petro oil/bitum min/70%+ by wt. fr. petro. oils > 10% by wt. of fatty acid salts animal/vegetable origin
3403.19.10	Lubricating preparations containing 50% but less than 70% by weight of petroleum oils or of oils obtained from bituminous minerals
3403.19.50	Lubricating preparations containing less than 50% by weight of petroleum oils or of oils from bituminous minerals
3403.99.00	Lubricating preparations (incl. lubricant-based preparations), nesoi
3811.21.00	Additives for lubricating oils containing petroleum oils or oils obtained from bituminous minerals
3811.29.00	Additives for lubricating oils, nesoi
3901.10.10	Polyethylene having a specific gravity of less than 0.94 and having a relative viscosity of 1.44 or more, in primary forms
3901.10.50	Polyethylene having a specific gravity of less than 0.94, in primary forms, nesoi
3901.20.10	Polyethylene having a specific gravity of 0.94 or more and having a relative viscosity of 1.44 or more, in primary forms
3901.20.50	Polyethylene having a specific gravity of 0.94 or more, in primary forms, nesoi
3901.30.20	Ethylene copolymer: Vinyl acetate-vinyl chloride-ethylene terpoly w/ < 50% deriv of vinyl acetate, exc polymer aromatic/mod arom monomers
3901.30.60	Ethylene-vinyl acetate copolymers, nesoi
3901.90.10	Polymers of ethylene, nesoi, in primary forms, elastomeric
3901.90.55	Ethylene copolymers, in primary forms, other than elastomeric
3901.90.90	Polymers of ethylene, nesoi, in primary forms, other than elastomeric
3902.10.00	Polypropylene, in primary forms
3902.20.10	Polyisobutylene, elastomeric, in primary forms
3902.20.50	Polyisobutylene, other than elastomeric, in primary forms
3902.30.00	Propylene copolymers, in primary forms
3902.90.00	Polymers of propylene or of other olefins, nesoi, in primary forms
3903.11.00	Polystyrene, expandable, in primary forms
3903.19.00	Polystyrene, other than expandable, in primary forms
3903.20.00	Styrene-acrylonitrile (SAN) copolymers, in primary forms
3903.30.00	Acrylonitrile-butadiene-styrene (ABS) copolymers, in primary forms

HTS Subheading	Product Description
3903.90.10	Methyl methacrylate-butadiene-styrene (MBS) copolymers, in primary forms
3903.90.50	Polymers of styrene, nesoi, in primary forms
3904.10.00	Polyvinyl chloride, not mixed with any other substances, in primary forms
3904.21.00	Polyvinyl chloride, mixed with other substances, nonplasticized, in primary forms
3904.22.00	Polyvinyl chloride, mixed with other substances, plasticized, in primary forms
3904.30.20	Vinyl chloride copolymer: Vinyl acetate-vinyl chloride-ethylene terpoly w/< 50% deriv vinyl acetate, exc polymer aromatic/mod arom monomers
3904.30.60	Vinyl chloride-vinyl acetate copolymers, nesoi
3904.40.00	Vinyl chloride copolymers nesoi, in primary forms
3904.50.00	Vinylidene chloride polymers, in primary forms
3904.61.00	Polytetrafluoroethylene (PTFE), in primary forms
3904.69.10	Fluoropolymers, elastomeric, other than polytetrafluoroethylene, in primary forms
3904.69.50	Fluoropolymers, other than elastomeric and other than polytetrafluoroethylene, in primary forms
3904.90.10	Polymers of vinyl chloride or of other halogenated olefins, nesoi, in primary forms, elastomeric, in primary forms
3904.90.50	Polymers of vinyl chloride or of other halogenated olefins, nesoi, in primary forms, other than elastomeric, in primary forms
3905.12.00	Polyvinyl acetate, in aqueous dispersion
3905.19.00	Polyvinyl acetate, other than in aqueous dispersion, in primary forms
3905.21.00	Vinyl acetate copolymers, in aqueous dispersion
3905.29.00	Vinyl acetate copolymers, other than in aqueous dispersion, in primary forms
3905.30.00	Polyvinyl alcohols, whether or not containing unhydrolyzed acetate groups, in primary forms
3905.91.10	Copolymers of vinyl esters or other vinyls, in primary forms, containing by weight 50% or more of derivatives of vinyl acetate
3905.91.50	Copolymers of vinyl esters or other vinyls, in primary forms, nesoi
3905.99.80	Polymers of vinyl esters or other vinyl polymers, in primary forms, nesoi
3906.10.00	Polymethyl methacrylate, in primary forms
3906.90.10	Acrylic polymers (except PMMA) in primary forms, elastomeric
3906.90.20	Acrylic plastics polymers (except PMMA), in primary forms, nonelastomeric
3906.90.50	Acrylic polymers (except plastics or elastomers), in primary forms, nesoi
3907.10.00	Polyacetals in primary forms
3907.20.00	Polyethers, other than polyacetals, in primary forms
3907.30.00	Epoxide resins in primary forms
3907.40.00	Polycarbonates in primary forms
3907.50.00	Alkyd resins in primary forms
3907.61.00	Polyethylene terephthalate, having a viscosity number of 78 ml/g or higher
3907.69.00	Polyethylene terephthalate, having a viscosity number less than 78 ml/g
3907.70.00	Poly(lactic acid)
3907.91.20	Unsaturated allyl resins, uncompounded
3907.91.40	Unsaturated allyl resins, nesoi
3907.91.50	Unsaturated polyesters, other than allyl resins in primary forms

HTS Subheading	Product Description
3907.99.20	Thermoplastic liquid crystal aromatic polyester copolymers
3907.99.50	Other polyesters nesoi, saturated, in primary forms
3908.10.00	Polyamide-6, -11, -12, -6,6, -6,9, -6,10 or -6,12 in primary form
3908.90.20	Bis(4-amino-3-methylcyclohexyl)methaneisophthalic acid-laurolactam copolymer
3908.90.70	Other polyamides in primary forms
3909.10.00	Urea resins; thiourea resins
3909.20.00	Melamine resins
3909.40.00	Phenolic resins
3909.50.10	Polyurethanes, elastomeric, in primary forms
3909.50.20	Polyurethanes: cements, in primary forms
3909.50.50	Polyurethanes, other than elastomeric or cements, in primary forms
3910.00.00	Silicones in primary forms
3911.10.00	Petroleum resins, coumarone, indene, or coumarone-indene resins and polyterpenes, in primary forms
3911.90.10	Elastomeric polysulfides, polysulfones and other products specified in note 3 to chapter 39, nesoi, in primary forms
3911.90.15	Specified carbodiimide or homopolymer with polyethylene thermoplastic goods
3911.90.25	Thermoplastic polysulfides, polysulfones & oth products spec in note 3, chapt 39, cont aromatic monomer units or derived therefrom
3911.90.35	Benzenamine; and hydrocarbon novolac cyanate ester
3911.90.45	Thermosetting polysulfides, polysulfones & oth products spec in note 3, chapt 39, cont aromatic monomer units or derived therefrom
3911.90.70	Chlorinated synthetic rubber
3911.90.90	Polysulfides, polysulfones & other products specified in note 3 to chapter 39, nesoi
3912.12.00	Cellulose acetates, nesoi, in primary forms, plasticized
3912.20.00	Cellulose nitrates (including collodions), in primary forms
3912.39.00	Cellulose ethers, other than carboxymethylcellulose and its salts, in primary forms
3912.90.00	Cellulose and its chemical derivatives nesoi, in primary forms
3913.90.10	Chemical derivatives of natural rubber, nesoi, in primary forms
3913.90.50	Natural polymers and modified natural polymers, nesoi, in primary forms
3914.00.20	Cross-linked polyvinylbenzyltrimethylammonium chloride (Cholestyramine resin USP)
3914.00.60	Ion-exchangers based on polymers of headings 3901 to 3913, in primary forms, nesoi
3916.10.00	Monofilament with cross-section dimension over 1 mm, rods, sticks, profile shapes, at most surface-worked, of polymers of ethylene
3916.20.00	Monofilament with cross-section dimension over 1 mm, rods, sticks, profile shapes, at most surface-worked, of polymers of vinyl chloride
3916.90.10	Monofilament with cross-section dimension over 1 mm, rods, sticks, profile shapes, at most surface-worked, of acrylic polymers
3916.90.30	Monafilament nesoi, of plastics, excluding ethylene, vinyl chloride and acrylic polymers
3916.90.50	Rods, sticks and profile shapes, at most surface-worked, of plastics, nesoi
3917.21.00	Tubes, pipes and hoses, rigid, of polymers of ethylene
3917.22.00	Tubes, pipes and hoses, rigid, of polymers of propylene

HTS Subheading	Product Description
3917.23.00	Tubes, pipes and hoses, rigid, of polymers of vinyl chloride
3917.29.00	Tubes, pipes and hoses, rigid, of other plastics nesoi
3917.31.00	Flexible plastic tubes, pipes and hoses, having a minimum burst pressure of 27.6 MPa
3917.32.00	Tubes, pipes and hoses, of plastics, other than rigid, not reinforced or otherwise combined with other materials, without fittings
3917.40.00	Fittings of plastics, for plastic tubes, pipes and hoses, nesoi
3919.10.10	Self-adhesive plates, sheets, other flat shapes, of plastics, in rolls n/o 20 cm wide, light-reflecting surface produced by glass grains
3919.10.20	Self-adhesive plates, sheets, other flat shapes, of plastics, in rolls n/o 20 cm wide, not having a light-reflecting glass grain surface
3919.90.10	Self-adhesive plates, sheets, other flat shapes, of plastics, light-reflecting surface produced by glass grains, nesoi
3919.90.50	Self-adhesive plates, sheets, other flat shapes, of plastics, not having a light-reflecting surface produced by glass grains, nesoi
3920.10.00	Nonadhesive plates, sheets, film, foil and strip, noncellular, not reinforced or combined with other materials, of polymers of ethylene
3920.20.00	Nonadhesive plates, sheets, film, foil and strip, noncellular, not reinforced or combined with other materials, of polymers of propylene
3920.30.00	Nonadhesive plates, sheets, film, foil and strip, noncellular, not reinforced or combined with other materials, of polymers of styrene
3920.43.10	Nonadhesive plates/sheets/film/foil/strip made imitation of patent leather, of vinyl chloride polymers, not less 6% plasticizers
3920.43.50	Nonadhesive plate/sheet/film/foil/strip, noncellular, not comb w/other materials, of vinyl chloride polymers, not less 6% plasticizer, nesoi
3920.49.00	Nonadhesive plates, sheets, film, foil, strip, noncellular, not combined w/other materials, of polymers of vinyl chloride, < 6% plasticizers
3920.51.10	Nonadhesive plates, sheets, film, foil and strip, noncellular, not combined with other materials, of polymethyl methacrylate, flexible
3920.51.50	Nonadhesive plates, sheets, film, foil and strip, noncellular, not combined with other materials, of polymethyl methacrylate, not flexible
3920.59.10	Nonadhesive plates, sheets, film, foil and strip, noncellular, not combined with other materials, of acrylic polymers, flexible, nesoi
3920.59.40	Transparent sheeting containing 30% or more by weight of lead
3920.59.80	Plates, sheets, film, etc, noncellular, not reinforced, laminated, combined, of other acrylic polymers, nesoi
3920.61.00	Nonadhesive plates, sheets, film, foil and strip, noncellular, not combined with other materials, of polycarbonates
3920.62.00	Nonadhesive plates, sheets, film, foil and strip, noncellular, not combined with other materials, of polyethylene terephthalate
3920.63.10	Nonadhesive plates, sheets, film, foil and strip, noncellular, not combined with other materials, of unsaturated polyesters, flexible
3920.63.20	Nonadhesive plates, sheets, film, foil and strip, noncellular, not combined with other materials, of unsaturated polyesters, not flexible
3920.69.00	Nonadhesive plates, sheets, film, foil and strip, noncellular, not combined with other materials, of polyesters, nesoi

HTS Subheading	Product Description
3920.71.00	Nonadhesive plates, sheets, film, foil and strip, noncellular, not combined with other materials, of regenerated cellulose
3920.73.00	Nonadhesive plates, sheets, film, foil and strip, noncellular, not combined with other materials, of cellulose acetate
3920.79.05	Nonadhesive plates, sheets, film, foil and strip, noncellular, not combined with other materials, of vulcanized fiber
3920.79.10	Nonadhesive films, strips, sheets, noncellular, not combined with other materials, of other cellulose derivatives nesoi, n/o 0.076 mm thick
3920.79.50	Nonadhesive plates, sheets, film, foil and strip, noncellular, not combined with other materials, of cellulose derivatives, nesoi
3920.91.00	Nonadhesive plates, sheets, film, foil and strip, noncellular, not combined with other materials, of polyvinyl butyral
3920.92.00	Nonadhesive plates, sheets, film, foil and strip, noncellular, not combined with other materials, of polyamides
3920.93.00	Nonadhesive plates, sheets, film, foil and strip, noncellular, not combined with other materials, of amino-resins
3920.94.00	Nonadhesive plates, sheets, film, foil and strip, noncellular, not combined with other materials, of phenolic resins
3920.99.10	Nonadhesive film, noncellular, not combined with other materials, of plastics nesoi, flexible, over 0.152mm thick, not in rolls
3920.99.20	Nonadhesive film, strips and sheets, noncellular, not combined with other materials, of plastics nesoi, flexible
3920.99.50	Nonadhesive plates, sheets, film, foil and strip, noncellular, not combined with other materials, of plastics, nesoi
3921.11.00	Nonadhesive plates, sheets, film, foil and strip, cellular, of polymers of styrene
3921.12.11	Nonadhesive plates, sheets, film, foil, strip, cellular, of polymers of vinyl chloride, with man-made textile fibers, over 70% plastics
3921.12.15	Nonadhesive plates, sheets, film, foil, strip, cellular, of polymers of vinyl chloride, with man-made textile fibers, n/o 70% plastics
3921.12.19	Nonadhesive plates, sheets, film, foil and strip, cellular, of polymers of vinyl chloride, combined with textile materials, nesoi
3921.12.50	Nonadhesive plates, sheets, film, foil and strip, cellular, of polymers of vinyl chloride, not combined with textile materials
3921.13.11	Nonadhesive plates, sheets, film, foil and strip, cellular, of polyurethanes, with man-made textile fibers, over 70% plastics
3921.13.15	Nonadhesive plates, sheets, film, foil and strip, cellular, of polyurethanes, with man-made textile fibers, not over 70 percent plastics
3921.13.19	Nonadhesive plates, sheets, film, foil and strip, cellular, of polyurethanes, combined with textile materials nesoi
3921.13.50	Nonadhesive plates, sheets, film, foil and strip, cellular, of polyurethanes, not combined with textile materials, nesoi
3921.14.00	Nonadhesive plates, sheets, film, foil and strip, cellular, of regenerated cellulose
3921.19.00	Nonadhesive plates, sheets, film, foil and strip, cellular, of plastics nesoi
3921.90.11	Nonadhesive plates, sheets, film, foil, strip, of noncellular plastics combined with man-made fibers, n/o 1.492 kg/sq m, over 70% plastics

HTS Subheading	Product Description
3921.90.15	Nonadhesive plates, sheets, film, foil, strip, of noncellular plastics combined with man-made fibers, n/o 1.492 kg/sq m, n/o 70% plastics
3921.90.19	Nonadhesive plates, sheets, film, foil and strip, of noncellular plastics combined with textile materials, nesoi, not over 1.492 kg/sq m
3921.90.21	Nonadhesive plates, sheets, film, foil and strip, of noncellular plastics combined with cotton, over 1.492 kg/sq m
3921.90.25	Nonadhesive plates, sheets, film, foil and strip, of noncellular plastics combined with man-made fibers, over 1.492 kg/sq m
3921.90.29	Nonadhesive plates, sheets, film, foil and strip, of noncellular plastics combined with textile materials, nesoi, over 1.492 kg/sq m
3921.90.40	Nonadhesive plates, sheets, film, foil and strip, flexible, nesoi, of noncellular plastics
3921.90.50	Nonadhesive plates, sheets, film, foil and strip, nonflexible, nesoi, of noncellular plastics
7002.20.10	Glass rods of fused quartz or other fused silica, unworked
7308.10.00	Iron or steel, bridges and bridge sections
7308.20.00	Iron or steel, towers and lattice masts
7308.90.30	Iron or steel, not in part alloy steel, columns, pillars, posts, beams and girders
7308.90.60	Iron or steel, columns, pillars, posts, beams and girders, nesoi
7308.90.70	Steel, grating for structures or parts of structures
7308.90.95	Iron or steel, structures (excluding prefab structures of 9406) and parts of structures, nesoi
7614.10.10	Aluminum, stranded wire, cables & the like w/steel core, not electrically insulated, not fitted with fittings & not made up into articles
7614.90.20	Aluminum, elect. conductors of stranded wire, cables & the like (o/than w/steel core), n/elect. insulated, n/fitted w/fittings or articles
8406.82.10	Steam turbines other than for marine propulsion, of an output not exceeding 40 MW
8407.34.05	Spark-ignition reciprocating piston engines used in agricultural tractors, cylinder capacity over 1000 cc to 2000 cc
8407.34.35	Spark-ignition reciprocating piston engines used in agricultural tractors, cylinder capacity over 2000 cc
8407.90.10	Spark-ignition rotary or reciprocating internal-combustion piston engines nesoi, installed in agricultural/horticultural machinery/equipment
8407.90.90	Spark-ignition rotary or reciprocating internal-combustion piston engines, for machinery or equipment nesoi
8408.20.10	Compression-ignition internal-combustion piston engines to be installed in tractors suitable for agricultural use
8419.60.10	Machinery for liquefying air or gas containing brazed aluminum plate-fin heat exchangers
8419.89.10	Machinery and equipment for the treatment of materials (by a process which changes temperatures), for making paper pulp, paper or paperboard
8419.89.95	Industrial machinery, plant or equipment for the treatment of materials, by process involving a change in temperature, nesoi
8420.10.20	Calendering or similar rolling machines for making paper pulp, paper or paperboard
8420.99.10	Parts of calendering or rolling machines for processing textiles

HTS Subheading	Product Description
8424.82.00	Agricultural or horticultural projecting or dispersing equipment including irrigation equipment
8424.89.90	Other mechanical appliances for projecting, dispersing or spraying liquids or powders, nesoi
8432.29.00	Harrows (other than disc), scarifiers, cultivators, weeders and hoes for soil preparation or cultivation
8432.31.00	No-till direct seeders, planters and transplanters
8432.39.00	Seeders, planters and transplanters, nesoi
8432.42.00	Fertilizer distributors
8443.99.40	Parts of photocopying apparatus of subheading 8443.39.20 specified in additional U.S. note 4 to this chapter
8455.90.40	Parts for metal-rolling mills, other than rolls, in the form of castings or weldments, individually weighing less than 90 tons
8464.10.01	Sawing machines for working stone, ceramics, concrete, asbestos-cement or like mineral materials or for cold working glass
8465.95.00	Drilling or mortising machines for working wood, cork, bone, hard rubber, hard plastics or similar hard materials
8466.30.80	Special attachments for use solely or principally for machine tools of headings 8456 to 8465, nesoi
8473.50.60	Part/accessory (also face plate and lock latch) of printed circuit assemblies suitable for use w/machine of two or more heading 8469 to 8472
8473.50.90	Parts and accessories, nesoi, suitable for use with machines of two or more of the headings 8469 to 8472
8475.29.00	Machines for manufacturing or hot working glass or glassware, nesoi
8483.30.80	Bearing housings nesoi; plain shaft bearings
8486.10.00	Machines and apparatus for the manufacture of boules or wafers
8486.20.00	Machines and apparatus for the manufacture of semiconductor devices or electronic integrated circuits
8486.30.00	Machines and apparatus for the manufacture of flat panel displays
8486.40.00	Machines and apparatus for the manufacture of masks and reticles; for the assembly of electronic integrated circuits;
8486.90.00	Parts and accessories of the machines and apparatus for the manufacture of semiconductor devices, electronic integrated circuits and flat pa
8501.10.20	Electric motors of an output of under 18.65 W, synchronous, valued not over $4 each
8501.10.60	Electric motors of an output of 18.65 W or more but not exceeding 37.5 W
8501.20.40	Universal AC/DC motors of an output exceeding 74.6 W but not exceeding 735 W
8501.31.40	DC motors, nesoi, of an output exceeding 74.6 W but not exceeding 735 W
8501.31.80	DC generators of an output not exceeding 750 W
8501.32.20	DC motors nesoi, of an output exceeding 750 W but not exceeding 14.92 kW
8501.32.60	DC generators of an output exceeding 750 W but not exceeding 75 kW
8501.33.20	DC motors nesoi, of an output exceeding 75 kW but under 149.2 kW
8501.33.30	DC motors, nesoi, 149.2 kW or more but not exceeding 150 kW
8501.52.40	AC motors nesoi, multi-phase, of an output exceeding 750 W but not exceeding 14.92 kW
8501.53.60	AC motors, nesoi, multi-phase, 149.2 kW or more but not exceeding 150 kW

HTS Subheading	Product Description
8503.00.95	Other parts, nesoi, suitable for use solely or principally with the machines in heading 8501 or 8502
8507.80.40	Other storage batteries nesoi, of a kind used as the primary source of electrical power for electrically powered vehicles of 8703.90
8507.80.81	Other storage batteries nesoi, other than of a kind used as the primary source of power for electric vehicles
8511.80.20	Voltage and voltage-current regulators with cut-out relays designed for use on 6, 12 or 24 V systems
8511.80.40	Voltage and voltage-current regulators with cut-out relays other than those designed for use on 6, 12 or 24 V systems
8511.90.20	Parts of voltage and voltage-current regulators with cut-out relays, designed for use on 6, 12 or 24 V systems
8511.90.40	Parts of voltage and voltage-current regulators with cut-out relays, other than those designed for use on 6, 12 or 24 V systems
8529.10.91	Other antennas and antenna reflectors of all kinds and parts, for use
8533.90.40	For the goods of subheading 8533.40, of ceramic or metallic materials, electrically or mechanically reactive to changes in temperature
8536.30.80	Electrical apparatus for protecting electrical circuits, for a voltage not exceeding 1,000 V, nesoi
8536.50.70	Certain specified electronic and electromechanical snap-action switches, for a voltage not exceeding 1,000 V
8536.70.00	Connectors for optical fibers, optical fiber bundles or cables
8537.10.30	Electric control panels, for a voltage not exceeding 1,000, assembled with outer housing or supports, for goods of 8421, 8422, 8450 or 8516
8541.10.00	Diodes, other than photosensitive or light-emitting diodes
8541.40.60	Diodes for semiconductor devices, other than light-emitting diodes, nesoi
8542.31.00	Electronic integrated circuits: processors and controllers
8542.32.00	Electronic integrated circuits: memories
8542.33.00	Electronic integrated circuits: amplifiers
8542.39.00	Electronic integrated circuits: other
8542.90.00	Parts of electronic integrated circuits and microassemblies
8543.70.45	Other electric synchros and transducers; defrosters and demisters with electric resistors for aircraft
8543.70.99	Other machinery in this subheading
8544.49.10	Insulated electric conductors of a kind used for telecommunications, for a voltage not exceeding 80 V, not fitted with connectors
8544.49.20	Insulated electric conductors nesoi, for a voltage not exceeding 80 V, not fitted with connectors
8544.60.60	Insulated electric conductors nesoi, not of copper, for a voltage exceeding 1,000 V, not fitted with connectors
8601.20.00	Rail locomotives powered by electric accumulators (batteries)
8602.10.00	Diesel-electric locomotives
8605.00.00	Railway or tramway passenger coaches and special purpose railway or tramway coaches, not self-propelled
8606.10.00	Railway or tramway tank cars and the like, not self-propelled

HTS Subheading	Product Description
8606.30.00	Railway or tramway self-discharging freight cars (o/than tank cars or insulated/refrig. freight cars), not self-propelled
8606.91.00	Railway or tramway freight cars nesoi, closed and covered, not self-propelled
8606.92.00	Railway or tramway freight cars nesoi, open, with nonremovable sides of a height over 60 cm, not self-propelled
8606.99.01	Railway or tramway freight cars nesoi, not self-propelled
8607.11.00	Parts of railway/tramway locomotives/rolling stock, truck assemblies for self-propelled vehicles
8607.19.03	Parts of railway/tramway locomotives/rolling stock, axles
8607.19.30	Parts of railway/tramway locomotives/rolling stock, parts of truck assemblies for non-self-propelled passenger coaches or freight cars
8607.30.10	Parts of railway/tramway locomotives/rolling stock, hooks and other coupling devices, buffers, pts thereof, for stock of 8605 or 8606
8607.30.50	Parts of railway/tramway locomotives/rolling stock, hooks and other coupling devices, buffers, pts thereof, for stock of 8601 to 8605
8701.20.00	Road tractors for semi-trailers
8701.30.50	Track-laying tractors, not suitable for agricultural use
8701.91.10	Other tractors of engine power <18kW, for agricultural use
8701.91.50	Other tractors of engine power <18kW, not for agricultural use
8701.92.10	Other tractors of engine power => 18kW but < 37kW, for agricultural use
8701.92.50	Other tractors of engine power => 18kW but < 37kW, not for agricultural use
8701.93.10	Other tractors of engine power => 37kW but < 75kW, for agricultural use
8701.93.50	Other tractors of engine power => 37kW but < 75kW, not for agricultural use
8701.94.10	Other tractors of engine power => 75kW but < 130kW, for agricultural use
8701.94.50	Other tractors of engine power => 75kW but < 130kW, not for agricultural use
8701.95.10	Other tractors of engine power >130kW, for agricultural use
8701.95.50	Other tractors of engine power >130kW, not for agricultural use
8704.90.00	Mtr. vehicles for transport of goods, o/than w/compress. ign. or spark ign. recip. piston engine, nesoi
8705.10.00	Mtr. vehicles (o/than for transport of persons or of goods), mobile cranes
8705.20.00	Mtr. vehicles (o/than for transport of persons or of goods), mobile drilling derricks
8705.90.00	Mtr. vehicles (o/than for transport of persons or of goods), special purpose motor vehicles nesoi
8711.10.00	Motorcycles (incl. mopeds) and cycles, fitted w/recip. internal-combustion piston engine w/capacity n/o 50 cc
8711.60.00	Motorcycles (incl. mopeds) and cycles, w/electric motor for propulsion
8711.90.01	Motorcycles (incl. mopeds) and cycles, nesoi
8901.30.00	Vessels, designed for the transport of goods, refrigerated vessels (o/than tankers)
9001.10.00	Optical fibers, optical fiber bundles and cables, other than those of heading 8544
9001.20.00	Sheets and plates of polarizing material
9014.10.90	Direction finding compasses, other than optical instruments, gyroscopic compasses or electrical
9025.19.40	Pyrometers, not combined with other instruments

HTS Subheading	Product Description
9025.19.80	Thermometers, for direct reading, not combined with other instruments, other than liquid-filled thermometers
9025.80.10	Electrical: hydrometers & sim. floating instr., hygrometers, psychometers, & any comb. with or w/o thermometers, pyrometers, & barometers
9027.10.20	Electrical gas or smoke analysis apparatus
9028.10.00	Gas supply or production meters, including calibrating meters thereof
9028.20.00	Liquid supply or production meters, including calibrating meters thereof
9028.30.00	Electricity supply or production meters, including calibrating meters thereof
9029.20.40	Speedometers and tachometers, other than bicycle speedometers
9029.90.80	Parts and accessories of revolution counters, production counters, odometers, pedometers and the like, of speedometers nesoi and tachometers
9030.31.00	Multimeters for measuring or checking electrical voltage, current, resistance or power, without a recording device
9030.32.00	Multimeters, with a recording device
9030.84.00	Instruments and apparatus for measuring, checking or detecting electrical quantities or ionizing radiations, nesoi: with a recording device
9030.89.01	Instruments and apparatus for measuring, checking or detecting electrical quantities or ionizing radiations, nesoi: w/o a recording device

ANNEX C

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 23, 2018:

1. U.S. note 20(a) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) is modified:

    a. by deleting: "Products of China that are classified in the subheadings enumerated in U.S. note 20(b) to subchapter III and that are eligible for special tariff treatment under general note 3(c)(i) to the HTSUS"; and

    b. by inserting in lieu thereof: "Products of China that are classified in the subheadings enumerated in U.S. note 20(b) to subchapter III and that are eligible for special tariff treatment under general note 3(c)(i) to the tariff schedule, or that are eligible for temporary duty exemptions or reductions under subchapter II to chapter 99,".

2. U.S. note 20(a) to subchapter III of chapter 99 of the HTS is modified:

    a. by deleting: "The rates of duty imposed by heading 9903.88.01 shall not apply to products for which entry is properly claimed under a heading or subheading in chapter 98."; and

    b. by inserting in lieu thereof: "The additional duties imposed by heading 9903.88.01 do not apply to goods for which entry is properly claimed under a provision of chapter 98 of the HTSUS, except for goods entered subheadings 9802.00.40, 9802.00.50, and 9802.00.60, and heading 9802.00.80. For subheadings 9802.00.40, 9802.00.50, and 9802.00.60, the additional duties apply to the value of repairs, alterations, or processing performed abroad, as described in the applicable subheading. For heading 9802.00.80, the additional duties apply to the value of the article less the cost or value of such products of the United States, as described in heading 9802.00.80."

3. Subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified by deleting the article description of heading 9903.88.01 and inserting the following article description in lieu thereof:
   "Articles the product of China, as provided for in U.S. note 20(a) to this subchapter and as provided for in the subheadings enumerated in U.S. note 20(b)".

4. U.S. note 20(b) to subchapter III of chapter 99 of the HTS is modified by deleting "9033.00" and inserting "9033.00.90" in lieu thereof.

[FR Doc. 2018–17709 Filed 8–15–18; 8:45 am]

BILLING CODE 3290–F8–C

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2018–0031]

Generalized System of Preferences (GSP): Notice Regarding the Initiation of Country Practice Review of Turkey

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of public hearing and request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is announcing the initiation of a country practice review of the eligibility of Turkey for benefits under the GSP program. This review will focus on whether Turkey is meeting the GSP eligibility criterion that requires a GSP beneficiary country to assure the United States that it will provide equitable and reasonable access to its market. This notice includes the schedule for submission of public comments and a public hearing.

DATES:

September 12, 2018 at midnight EDT: Deadline for submission of comments, pre-hearing briefs, and requests to appear at the September 26, 2018 public hearing.

September 26, 2018: The GSP Subcommittee of the Trade Policy Staff Committee (TPSC) will convene a public hearing on the GSP country practice review of Turkey in Rooms 1 and 2, 1724 F Street NW, Washington DC 20508, beginning at 10:00 a.m.

October 17, 2018 at midnight EDT: Deadline for submission of post-hearing briefs.

ADDRESSES: USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: *http://www.regulations.gov.* The submission instructions are in section D below. The docket number is USTR–2018–0031. For alternatives to on-line submissions, please contact Lauren Gamache at 202–395–2974 or *gsp@ustr.eop.gov* before transmitting a comment and in advance of the relevant deadline.

FOR FURTHER INFORMATION CONTACT: Contact Lauren Gamache at 202–395–2974 or *gsp@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The GSP program provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461–2467), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

B. Initiation of a Country Practice Review of Turkey

USTR will lead a review of the eligibility of Turkey for benefits under the GSP program, and the GSP Subcommittee of the TPSC invites public comments regarding this review. The country practice review of Turkey will focus on whether Turkey is meeting the GSP eligibility criterion that requires a GSP beneficiary country to assure the United States that it will provide equitable and reasonable access to its market (19 U.S.C. 2462(c)(4)). Turkey recently has implemented a wide array of trade barriers that create serious negative effects on U.S. commerce, including imposing additional duties only on U.S. products, and in some instances, imposing additional duties that exceed the rates set out by Turkey in its World Trade Organization schedule of concessions.

C. Notice of Public Hearing

The GSP Subcommittee of the TPSC will hold a hearing on September 26, 2018, beginning at 10:00 a.m., to receive information regarding the country practice review of Turkey. The hearing will be held in Rooms 1 and 2, 1724 F Street NW, Washington, DC 20508, and will be open to the public and to the press. A transcript of the hearing will be available on *www.regulations.gov* within approximately two weeks after the date of the hearing. All interested parties wishing to make an oral presentation at the hearing must submit, following the Requirements for Submissions below, the name, address, telephone number, and email address, if available, of the witness(es) representing their organization no later than midnight on September 12, 2018.

Requests to present oral testimony must be accompanied by a written brief or summary statement, in English. The GSP Subcommittee of the TPSC will limit oral testimony to five-minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. The GSP Subcommittee of the TPSC will accept post-hearing briefs or statements if they conform to the requirements set out below and are submitted in English, no later than midnight on October 17, 2018.

Parties not wishing to appear at the public hearing may submit pre-hearing and post-hearing briefs or comments by these deadlines. In order to be assured of consideration, you must submit all post-hearing briefs or statements by the October 17, 2018 deadline via *www.regulations.gov* using docket number USTR–2018–0031.

D. Requirements for Submissions

Submissions in response to this notice, including requests to testify, written comments, and pre-hearing and post-hearing briefs, must be submitted by the applicable deadlines set forth in this notice. All submissions must be made in English and submitted electronically via *http://www.regulations.gov,* using docket number USTR–2018–0031.

To submit comments via *www.regulations.gov,* enter docket number USTR–2018–0031 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled ''comment now!''. For further information on using the *www.regulations.gov* website, please consult the resources provided on the website by clicking on ''How to Use Regulations.gov'' on the bottom of the home page. USTR will not accept hand-delivered submissions.

The *www.regulations.gov* website allows users to submit comments by filling in a ''type comment'' field or by attaching a document using an ''upload file'' field. USTR prefers that you submit comments in an attached document. At the beginning of the submission, or on the first page (if an attachment) please identify the submission as follows: (1) ''Turkey Country Practice Review''; (2) the subject matter; and (3) whether the document is a ''Written Comment,'' ''Notice of Intent to Testify,'' ''Pre-hearing brief,'' or a ''Post-hearing brief.'' Submissions should not exceed thirty single-spaced, standard letter-size pages in twelve-point type, including attachments. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If you use an application other than those two, please indicate the name of the application in the ''type comment'' field.

Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments. For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. Filers of submissions containing business confidential information also must submit a public version of their comments that we will place in the docket for public inspection. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments.

As noted, USTR strongly urges that you file submissions through *www.regulations.gov.* You must make any alternative arrangements with Lauren Gamache at 202–395–2974 or *gsp@ustr.eop.gov* before transmitting a comment and in advance of the relevant deadline. Documents not submitted in accordance with these instructions may not be considered in this review.

USTR will post submissions in the docket for public inspection, except business confidential information. You can view submissions on the *https://www.regulations.gov* website by entering docket number USTR–2018–0031 in the search field on the home page. General information concerning USTR is available at *www.ustr.gov.*

Erland Herfindahl,

Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences, Office of the U.S. Trade Representative.

[FR Doc. 2018–17712 Filed 8–15–18; 8:45 am]

BILLING CODE 3290–F8–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2018–67]

Petition for Exemption; Summary of Petition Received; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before September 5, 2018.

ADDRESSES: Send comments identified by docket number FAA–2013–0015 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

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

FOR FURTHER INFORMATION CONTACT: Michael Harrison, AIR–673, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198, phone 206–231–3368, email *Michael.Harrison@faa.gov;* or Alphonso Pendergrass, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, phone 202–267–4713, email *Alphonso.Pendergrass@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Des Moines, Washington, on August 10, 2018.

Victor Wicklund,

Manager, Transport Standards Branch.

Petition for Exemption

Docket No.: FAA–2013–0015.

Petitioner: The Boeing Company.

Section(s) of 14 CFR Affected: § 25.813(e).

Description of Relief Sought: The Boeing Company requests another amendment to Exemption No. 10879 to add the Model 787–10 airplane, increase the maximum number of mini-suites allowed, and change the conditions of the exemption regarding evacuation analysis.

[FR Doc. 2018–17642 Filed 8–15–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2018–66]

Petition for Exemption; Summary of Petition Received; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before September 5, 2018.

ADDRESSES: Send comments identified by docket number FAA–2017–0259 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building

Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

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

FOR FURTHER INFORMATION CONTACT: Michael Harrison, AIR–673, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198, phone 206–231–3368, email *Michael.Harrison@faa.gov;* or Alphonso Pendergrass, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, phone 202–267–4713, email *Alphonso.Pendergrass@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Des Moines, Washington, on August 10, 2018.

Victor Wicklund,

Manager, Transport Standards Branch.

Petition for Exemption

Docket No.: FAA–2017–0259.

Petitioner: The Boeing Company.

Section(s) of 14 CFR Affected: § 25.813(e).

Description of Relief Sought: The Boeing Company requests an amendment to Exemption No. 17634 to add the Model 777–8 and 777–9 airplanes, increase the maximum number of mini-suites allowed, and change the conditions of the exemption regarding evacuation analysis.

[FR Doc. 2018–17641 Filed 8–15–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0087]

Agency Information Collection Activities; Renewal of Existing Information Collection Request: Lease and Interchange of Vehicles

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval.

DATES: Please send your comments by September 17, 2018. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2018–0087–0001. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Crystal Frederick, Transportation Specialist, Compliance Division, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Telephone: 202–366–2904; Email Address: *crystal.frederick@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION: This ICR will enable FMCSA to document the burden associated with the for-hire truck leasing regulations codified in 49 CFR part 376, ''Lease and Interchange of Vehicles'' and passenger carrier regulations codified at 49 CFR part 390, subpart F, ''Lease and Interchange of Passenger-Carrying Commercial Motor Vehicles.'' These regulations require certain motor carriers to have a formal lease when leasing equipment. The FMCSA requests approval to renew an ICR titled, ''Lease and Interchange of Vehicles.''

Title: Lease and Interchange of Vehicles.

OMB Control Number: 2126–0056.

Type of Request: Renewal of information collection.

Respondents: Motor carriers authorized by the Secretary to transport property and passengers that use leased equipment.

Estimated Number of Respondents: 5,213,193 [18,820 lessees (IC–1) + 18,820 lessors (IC–1) + 5,175,552 carrier representatives (IC–2).

Estimated Time per Response: Varies from 5 to 30 minutes.

Expiration Date: August 31, 2018.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 1,136,114 hours [18,820 master lease (ICR Component 1 (IC–1)) + 62,236 standard statement (IC–1) + 13,478 master lease (ICR Component 2 (IC–2)) + 862,592 negotiation (IC–2) + 143,190 documentation (IC–2) + 0 (negligible) copying (IC–2) + 35,798 charter group notification (IC–2)].

Background: The Secretary of Transportation (Secretary) is authorized to require a motor carrier that uses commercial motor vehicles not owned by it to transport property under an arrangement with another party to make the arrangement in writing. This written lease agreement must specify its duration, the compensation to be paid by the motor carrier providing transportation subject to jurisdiction under 49 U.S.C. 14102(a), ''Leased Motor Vehicles'' and signed by the parties. The Secretary has delegated authority pertaining to leased motor vehicles to FMCSA pursuant to 49 CFR 1.87(a)(6). The Agency's regulations governing leased motor vehicles are at 49 CFR part 376.

The rules were adopted to ensure that small trucking companies were protected when they agreed to lease their equipment and drivers to larger for-hire carriers. They also ensure that the government and members of the public can determine who is responsible for a property-carrying commercial motor vehicle. Prior to the regulations, some equipment was leased without written agreements, leading to disputes over which party to the lease was responsible for charges and actions and, at times, who was legally responsible for the vehicle. Under 49 U.S.C. 14102(a), FMCSA ''may require a motor carrier providing for-hire transportation that uses motor vehicles not owned by it to transport property under an arrangement with another party to—

(1) Make the arrangement in writing signed by the parties specifying its duration and the compensation to be paid by the motor carrier;

(2) carry a copy of the arrangement in each motor vehicle to which it applies during the period the arrangement is in effect;

(3) inspect the motor vehicles and obtain liability and cargo insurance on them; and

(4) have control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary on safety of operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier.''

The rules specify what must be covered in the lease, but leave open how many responsibilities must be divided. The parties to the lease determine numerous details between themselves.

Part 376 applies only to certain motor carriers in interstate commerce and only to certain leasing situations based on exemptions set forth in 49 CFR 376.11, which cross references other provisions in part 376. Section 376.11 requires that authorized carriers (a person or persons authorized to engage in the transportation of property as a motor carrier under the provisions of 49 U.S.C. 13901 and 13902) may perform authorized transportation using equipment it does not own only when the following conditions are met: (1) There shall be a written lease granting the use of the equipment and meeting the requirements contained in 376.12; and (2) Receipts, specifically identifying the equipment to be leased and stating the date and time of day possession is transferred, shall be given; and (3) The authorized carrier acquiring the use of equipment under this section shall identify the equipment as being in its service.

These property and passenger carrier provisions account for the burden in this information collection.

This program change increase of 527,214 estimated annual burden hours (1,136,114 proposed estimated annual burden hours—608,900 currently approved estimated annual burden) is due to updated estimates of the number of respondents and responses. Previous estimates were based on 2014 data. Current estimates are based on September 26, 2017, Motor Carrier Management Information System and Safety Measurement System snapshots. The data pulled for the current ICR shows an increase in the overall number of carriers since the data used in the previous ICR. The increased carriers resulted in an increase in the overall burden hours associated with this ICR.

FMCSA received a total of 13 comments concerning the Leasing ICR, 12 in the appropriate docket and 1 misfiled in another docket in response to the 60-day comment **Federal Register** (83 FR 17884), published on April 24, 2018. Comments were received from the following organizations and/or individuals: Academy Bus, Adirondack Transit Lines, American Bus Association, Connecticut Bus Association, Elite Coach, FTI Coach Lines, Greyhound Lines, Jefferson Lines, Burlington Trailways, Anderson Coach & Travel, Owner-Operator Independent Drivers Association (OOIDA), Trans-Bridge Lines, and Tim Watson from an unnamed carrier.

The majority of the comments received made points against the Leasing rule that include the following: (1) The ICR will present a significant paperwork burden to carriers, (2) there is a shift in liability from the lessor to the lessee without explanation, (3) the Leasing rule will negatively impact carrier operations and businesses, and (4) the ICR should not be approved because the Leasing rule itself needs to be repealed. Additional, less frequently cited points include: (1) The rule will negatively impact safety, (2) the definition used for the term, ''lease'' is inconsistent with other organizations and governments, and (3) FMCSA will make changes to the Leasing rule so close to the pending compliance date that there will be insufficient time to address potential remaining issues with the rule.

First, based on FMCSA's estimates, we do not believe there is a significant burden represented by this ICR as the estimated time per response is between 5 and 30 minutes and the collection frequency is estimated to be occasionally. Second, the remainder of the comments are out of scope as they speak to the leasing rule itself and not the collection request represented in this ICR.

One commenter, OOIDA, expressed support of the Leasing rule. OOIDA made the following points: (1) The Leasing rule ensures that motor carriers take more responsibility in the lessor/lessee relationship and diminishes abuse of that relationship, (2) the burden for complying with the rule will not be significant, and (3) the Leasing rule supports safety by permitting owner-operators to manage their business and not drive when tired. Additionally, OOIDA also commented specifically on the collection outlined in the ICR, indicating the following: ''Although it is fair to estimate that the information that the Rules require to be disclosed may fit on a single page, some carriers choose to express the required lease provisions in more lengthy documents. Leases are often multiple pages because they also contain contractual provisions beyond those required by the rules. That factors leans toward a higher burden (at the choice of motor carriers) than estimated by the Agency. The typical lease is for a term of one year, and such leases are regularly self-renewing and not recreated and affirmed on an annual basis. Therefore, in these instances, the burden of issuing copies of leases would be less.'' While FMCSA appreciates these points on the length of documents and self-renewal, without specific numbers on document length or frequency of self-renewals we have no specific basis to adjust the numbers in the ICR and intend to keep the estimates proposed at this time.

As FMCSA announced in a notice titled, Proposal in response to petitions for reconsideration; request for public comments, dated June 16, 2017, it intends to publish a notice of proposed rulemaking (NPRM) to revise the 2015 final rule, reducing the burdens generally it would have imposed on motor carriers of passengers [82 FR 27768]. Currently, FMCSA is working on the NPRM and expects to publish it later in 2018. The compliance date of the 2015 rule, currently January 1, 2019 [82 FR 27766], will be extended and ultimately replaced by a new compliance date adopted upon completion of the forthcoming rulemaking. For the purpose of this ICR all of the burden from the existing regulations must be assessed.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: August 8, 2018.

G. Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2018–17683 Filed 8–15–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2018–0050]

Pipeline Safety: Gas and Hazardous Liquid Pipeline Risk Models

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: PHMSA is publishing this notice to seek public comments on a report developed to support improvements in gas and hazardous liquid pipeline risk models titled ''Pipeline Risk Modeling—Overview of Methods and Tools for Improved Implementation'' (Pipeline Risk Modeling Report). Pipeline risk models are a foundational part of the assessment of operational pipeline risk. Federal pipeline safety integrity management (IM) regulations require pipeline operators to use risk assessments. Based on the results of pipeline inspections and failure investigation findings, both PHMSA and the National Transportation Safety Board (NTSB) have identified general weaknesses in the risk models often used by pipeline operators in performing risk assessments for their IM programs. The Pipeline Risk Modeling Report considers the major types of pipeline risk models, and the effectiveness of each type in supporting risk assessments, as applied to pipeline operator decisions.

DATES: Interested persons are invited to submit comments on or before September 17, 2018.

ADDRESSES: Comments may be submitted in the following ways:

E-Gov Website: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number, PHMSA–2018–0050, at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on PHMSA–2018–0050.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

Note: Privacy Act Statement: DOT may solicit comments from the public regarding certain general notices. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. Steve Nanney, Project Manager, PHMSA, by telephone at 713–272–2855, or by email at *Steve.Nanney@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA is issuing the Pipeline Risk Modeling Report to support improvements in pipeline risk models and requests public comments. Both PHMSA and NTSB have identified a need to address the risk models often used by pipeline operators in performing risk assessments for their IM programs and provide guidance where appropriate. NTSB has issued three recommendations to PHMSA in this area. NTSB Recommendation P–15–10 recommends that PHMSA update guidance for gas transmission pipeline operators and inspectors on the evaluation of interactive threats, including the listing of all threat interactions that must be evaluated and acceptable methods to be used.[1] NTSB Safety Recommendation P–15–12 recommends that PHMSA evaluate the safety benefits of the four risk assessment approaches currently allowed by the gas integrity management regulations; determine whether they produce a comparable safety benefit; and disseminate the results of your evaluation to the pipeline industry, inspectors, and the public.[2] Lastly, NTSB Recommendation P–15–13 recommends that PHMSA update guidance for gas transmission pipeline operators and inspectors on critical components of risk assessment approaches, including (1) methods for setting weighting factors, (2) factors that should be included in consequence of failure calculations, and (3) appropriate risk metrics and methods for aggregating risk along a pipeline.[3] PHMSA is addressing these recommendations through the Risk Modeling Report process.

PHMSA organized a Risk Modeling Work Group (RMWG) composed of representatives of state and federal pipeline regulators, pipeline operators, industry organizations, national laboratory personnel, and other stakeholders. The purpose of the RMWG was to gather information regarding state-of-the-art pipeline risk modeling methods and tools, the use of those methods and tools, and the resulting data in operator IM programs. The Pipeline Risk Modeling Report provides an overview of methods and tools for improved implementation based on the results of the RMWG. The RMWG meeting notes and presentations can be reviewed at: *https://primis.phmsa.dot.gov/rmwg/index.htm.*

The Pipeline Risk Modeling Report considers the major types of pipeline risk models, and the effectiveness of each type in supporting risk assessments, as applied to pipeline operator decisions. The four major risk model categories considered for gas and hazardous liquid pipelines are:

- Qualitative;
- Relative Assessment/Index;
- Quantitative System, and
- Probabilistic.

Each model category is characterized by the model inputs, outputs, and algorithms and was evaluated according to its ability to support pipeline risk management decisions and regulatory requirements.

[1] *https://www.ntsb.gov/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=P-15-010.*

[2] *https://www.ntsb.gov/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=P-15-012.*

[3] *https://www.ntsb.gov/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=P-15-013.*

The Pipeline Risk Modeling Report focuses on the applicability of the different risk model types to various risk management decisions required by the Federal pipeline safety IM regulations, including:

• Risk Priorities for Baseline Integrity Assessments;

• Identification of Preventive Measures and Mitigative Measures;

• Evaluation and Comparison of Preventive Measures and Mitigative Measures;

• Consideration of Threats and their Interactions in Risk Assessments;

• Benefit-Cost Analysis for Risk Reduction Options;

• Integrity Assessment Interval Determination; and

• Support of Continual Evaluation of Integrity and General Risk Management Decision Making.

PHMSA invites interested persons to participate by reviewing the Pipeline Risk Modeling Report on gas and hazardous liquid pipeline risk models in docket no. PHMSA–2018–0050 at *http://www.Regulations.gov*, and by submitting written comments, data, or other views. Please include any comments on potential safety and environmental impacts that may result from issuance of the Pipeline Risk Modeling Report.

Before finalizing the Pipeline Risk Modeling Report, PHMSA will evaluate all comments received on or before the comment closing date. PHMSA will consider each timely-filed, relevant comment we receive in making any changes to the final Pipeline Risk Modeling Report. Comments received after the closing date will be evaluated to the extent practicable.

Issued in Washington, DC, on August 9, 2018, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2018–17659 Filed 8–15–18; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice that a meeting of the Advisory Committee on the Readjustment of Veterans will be held Tuesday, Wednesday and Thursday, September 11, 12, and 13, 2018. The meetings will be conducted at the Department of Veterans Affairs National Headquarters, at 811 Vermont Avenue NW, Washington, DC 20420, in Conference Room 6132. The agenda for these three days will begin at 8:00 a.m. and end at 4:30 p.m. The meetings are open to the public.

The purpose of the Committee is to review the post-war readjustment needs of combat-theater Veterans and to evaluate the availability, effectiveness and coordination of VA programs available to meet Veterans' readjustment service needs. The Committee reviews issues related to promoting Veterans' access to VA services, provision of readjustment counseling services at Vet Centers, and coordination of care between the Vet Centers and VA medical facilities.

On Tuesday, September 11, the agenda will feature briefings from the Readjustment Counseling Service (RCS) Chief Officer regarding the current activities of the RCS Vet Centers to include the full scope of outreach and readjustment counseling being provided to combat-theater Veterans, Service members and their families. The briefing will also provide a status report regarding the RCS organizational transition to a single point of service within the general organizational transformation of the Veterans Health Administration (VHA).

On Wednesday, September 12, the Committee will focus on VA mental health services and best practices for coordinating VA mental health services with RCS readjustment counseling services to better serve the combat-theater Veteran population. To this end Committee members will receive briefings from VA's mental health leadership on the types and distribution of psychiatric disorders currently being presented by OIF/OEF Veterans and the various treatment regimens provided for their care inclusive of psychotherapy and psychopharmacology. VA Mental Health and RCS leadership will additionally present on the collaborative activities currently underway between RCS and the Office of Mental Health and Suicide Prevention to achieve life-saving outcomes for at risk combat-theater Veterans and Service members.

On Thursday, September 13, the Committee will engage in strategic discussions for the purpose of formulating conclusions, perspectives and recommendations for developing its 20th annual report to Congress.

No time will be allocated at this meeting for receiving oral presentations from the public. However, members of the public may direct written questions or submit prepared statements for review by the Committee before the meeting to Mr. Charles M. Flora, M.S.W., Designated Federal Officer, Readjustment Counseling Service, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Because the meeting will be in a Government building, please provide valid photo identification for check-in. Please allow 15 minutes before the meeting for the check-in process. If you plan to attend or have questions concerning the meeting, please contact the Readjustment Counseling Service (10RCS) action group by email *VHA10RCSAction@va.gov* or call (202) 461–6525.

Dated: August 13, 2018.

Jelessa M. Burney,

Federal Advisory Committee Management Office.

[FR Doc. 2018–17708 Filed 8–15–18; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 83 Thursday,
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Part II

Securities and Exchange Commission

17 CFR Parts 229, 230, 232, et al.
Inline XBRL Filing of Tagged Data; Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 232, 239, 249, 270, and 274

[Release Nos. 33–10514; 34–83551; IC–33139; File No. S7–03–17]

RIN 3235–AL59

Inline XBRL Filing of Tagged Data

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to require the use of the Inline eXtensible Business Reporting Language (''XBRL'') format for the submission of operating company financial statement information and fund risk/return summary information. We also are adopting the elimination of the 15 business day XBRL filing period for fund risk/return summaries. The amendments are intended to improve the data's usefulness, timeliness, and quality, benefiting investors, other market participants, and other data users and to decrease, over time, the cost of preparing the data for submission to the Commission. The amendments will also eliminate the requirement for operating companies and funds to post ''Interactive Data Files'' (*i.e.,* machine-readable computer code that presents information in XBRL format) on their websites and terminate the Commission's voluntary program for the submission of financial statement information interactive data that is currently available only to investment companies and certain other entities.

DATES:

Effective date: These amendments are effective on September 17, 2018.

Compliance dates: See Section III.A.1.c.

FOR FURTHER INFORMATION CONTACT: Mark W. Green, Senior Special Counsel, Division of Corporation Finance, at (202) 551–3430; John Foley, Senior Counsel, Division of Investment Management, at (202) 551–6792; Robert M. Willis, Assistant Director, Office of Disclosure Technology, Anzhela Knyazeva, Senior Financial Economist, or Hermine Wong, Special Counsel, Division of Economic and Risk Analysis, at (202) 551–6600.

SUPPLEMENTARY INFORMATION: We are adopting amendments to:

Commission reference		CFR citation (17 CFR)
Regulation S–K [1]	Item 601	§ 229.601
Regulation S–T [2]	Rule 11	§ 232.11
	Rule 201	§ 232.201
	Rule 202	§ 232.202
	Rule 305	§ 232.305
	Rule 401	§ 232.401
	Rule 402	§ 232.402
	Rule 405	§ 232.405
Securities Act of 1933 (Securities Act) [3]	Rule 144	§ 230.144
	Rule 485	§ 230.485
	Rule 497	§ 230.497
	Form S–3	§ 239.13
	Form S–8	§ 239.16b
	Form F–3	§ 239.33
	Form F–10	§ 239.40
Securities Exchange Act of 1934 (Exchange Act) [4]	Rule 13a–14	§ 240.13a–14
	Rule 15d–14	§ 240.15d–14
	Form 10–Q	§ 249.308a
	Form 10–K	§ 249.310
	Form 20–F	§ 249.220f
	Form 40–F	§ 249.240f
	Form 6–K	§ 249.306
Investment Company Act of 1940 (Investment Company Act) [5]	Rule 8b–1	§ 270.8b–1
	Rule 8b–2	§ 270.8b–2
	Rule 8b–33	§ 270.8b–33
	Rule 30a–2	§ 270.30a–2
Securities Act and Investment Company Act	Form N–1A	§ 239.15A and 274.11A

[1] 17 CFR 229.10 through 229.1208.

[2] 17 CFR 232.10 through 232.903.

[3] 15 U.S.C. 77a *et seq.*

[4] 15 U.S.C. 78a *et seq.*

[5] 15 U.S.C. 80a *et seq.*

I. Introduction

In 2009 the Commission adopted rules requiring operating companies [6] to provide the information from the financial statements accompanying their registration statements and periodic and current reports in machine-readable format using XBRL by submitting it to the Commission in exhibits to such registration statements and reports and posting it on their websites, if any.[7] That same year, the Commission similarly required open-end management investment companies (including exchange-traded funds (''ETFs'') organized as open-end management investment companies) (''funds'') to provide risk/return summary information from their prospectuses in XBRL format by submitting it to the Commission in exhibits and posting it on their websites, if any.[8]

XBRL requirements currently apply to operating companies that prepare their financial statements in accordance with U.S. generally accepted accounting principles (''U.S. GAAP'') or in accordance with International Financial Reporting Standards (''IFRS'') as issued by the International Accounting Standards Board (''IASB'').[9] XBRL requirements also apply to funds pursuant to Form N–1A and related rules under Regulation S–T.[10] Operating companies and funds subject to these XBRL requirements must submit an Interactive Data File,[11] including information tagged in XBRL, as an exhibit to the Related Official Filing, which is filed in the traditional HyperText Markup Language (''HTML'') or, less commonly, American Standard Code for Information Interchange (''ASCII'') format.[12]

The 2009 requirements were intended to make financial information and fund risk/return summaries easier for investors to analyze and to assist in automating regulatory filings and business information processing.[13] Since that time, however, some observers have expressed concerns regarding the quality of, extent of use of, and cost to create XBRL data.[14] In addition, the Commission staff has identified common data quality issues associated with financial statement information XBRL data filed by operating companies.[15]

At the same time, since the adoption of the original XBRL requirements in 2009, other observers have disagreed with the claim that the XBRL requirements impose high costs and emphasized the decrease in costs over time as filers and filing agents have gained experience and widely adopted the XBRL technology.[16] Other observers have discussed the improvement in XBRL data quality over time and examined the benefits of XBRL data.[17] The same observers have associated XBRL data with better availability of information about smaller operating companies from an access to capital standpoint.[18]

We have reviewed and considered all of the comments that we received on the Inline XBRL Proposing Release.[19] The final amendments reflect changes made in response to those comments. We are adopting the Inline XBRL requirements for operating companies and funds substantially as proposed, with modifications to address input from commenters. We are also eliminating the XBRL website posting requirements for operating companies and funds and eliminating the Commission's interactive data voluntary program (''2005 XBRL Voluntary Program''),[20] as

6 For purposes of both the existing XBRL requirements for financial statement information and these amendments, operating companies are filers subject to the financial statement information XBRL requirements of Item 601(b)(101) of Regulation S–K and Forms F–10, 20–F, 40–F and 6–K. Operating companies do not include any investment company that is registered under the Investment Company Act, any business development company (''BDC''), as defined in Section 2(a)(48) of that Act [15 U.S.C. 80a–2(a)(48)], or any entity that reports under the Exchange Act and prepares its financial statements in accordance with Article 6 of Regulation S–X [17 CFR 210.6–01 through 210.6–10], as well as asset-backed issuers. *See* Release No. 33–9002 (Jan. 30, 2009) [74 FR 6776] (''2009 Financial Statement Information Adopting Release'') as corrected by Release No. 33–9002A (Apr. 1, 2009) [74 FR 15666], at 6780–1, nn. 69 and 78 and accompanying text.

7 17 CFR 232.405. *See also* 2009 Financial Statement Information Adopting Release.

8 *See* Release No. 33–9006 (Feb. 11, 2009) [74 FR 7747] (''2009 Risk/Return Summary Adopting Release'') as corrected by Release No. 33–9006A (May 1, 2009) [74 FR 21255]. The risk/return summary is set forth in Items 2, 3, and 4 of Form N–1A under the Securities Act and the Investment Company Act.

9 As used in this release, the phrase ''IFRS as issued by the IASB'' refers to the authoritative text of IFRS.

10 *See* General Instruction C.3.(g) to Form N–1A; Rule 405 of Regulation S–T.

11 17 CFR 232.11; 17 CFR 232.405. The term ''Interactive Data File'' means the machine-readable computer code that presents information in XBRL electronic format pursuant to Rule 405 of Regulation S–T. The Interactive Data File currently consists of an instance document and other documents as described in the Electronic Data Gathering, Analysis, and Retrieval system (EDGAR) Filer Manual. The instance document contains the XBRL tags for the information contained in the corresponding data in the Related Official Filing to satisfy the content and format requirements in Rule 405. The other documents in the Interactive Data File contain contextual information about the XBRL tags.

12 17 CFR 232.11. The term ''Related Official Filing'' means the ASCII or HTML format part of the official filing with which an Interactive Data File appears as an exhibit or, in the case of Form N–1A, the ASCII or HTML format part of the official filing that contains the information to which an Interactive Data File corresponds.

13 *See* 2009 Financial Statement Information Adopting Release, at 6776; 2009 Risk/Return Summary Adopting Release, at 7748.

14 *See* Release No. 33–10323 (Mar. 1, 2017) [82 FR 21487] (''Inline XBRL Proposing Release''), at 14283, nn. 29–30, at 14286, n. 70, at 14287, n. 78, and accompanying text.

15 *See, e.g.,* Staff Observations of Custom Axis Tags (Mar. 29, 2016), *https://www.sec.gov/structureddata/reportspubs/osd_assessment_custom-axis-tags.html* (retrieved *Jun. 20, 2018*); Staff Observations of Custom Tag Rates (July 7, 2014), *https://www.sec.gov/dera/reportspubs/assessment-custom-tag-rates-xbrl.html* (retrieved *Jun. 20, 2018*); Staff Observations from the Review of Interactive Data Financial Statements (Dec. 13, 2011), *https://www.sec.gov/spotlight/xbrl/staff-review-observations-121311.shtml* (retrieved *Jun. 20, 2018*).

16 *See* Inline XBRL Proposing Release, at 14286.

17 *See* Inline XBRL Proposing Release, at 14286 and at 14287, n. 81.

18 *Id.*

19 *See* letters from Advanced Computer Innovations, Inc. (Mar. 1, 2017) (''ACI''); Association of International Certified Professional Accountants (May 16, 2017) (''AICPA''); Biotechnology Innovation Organization (May 16, 2017) (''BIO''); CFA Institute (Jun. 12, 2017) (''CFA Institute''); Cigna Corporation (May 16, 2017) (''Cigna''); Data Coalition (May 16, 2017) (''Data Coalition''); Deloitte & Touche LLP (May 5, 2017) (''Deloitte'') ; Ernst & Young LLP (May 16, 2017) (''EY''); Federated Investors (May 16, 2017) (''Federated I''); Federated Investors (Jun. 1, 2018) (''Federated II''); Financial Executives International (May 16, 2017) (''FEI''); Jack Frei (Mar. 13, 2017) (''Frei''); Gartner, Inc. (May 10, 2017) (''Gartner''); Grant Thornton LLP (May 16, 2017) (''Grant Thornton''); Hindsight 2020, llc (May 15, 2017) (''Hindsight''); Charles S. Hoffman (May 14, 2017) (''Hoffman''); Investment Company Institute (May 16, 2017) (''ICI I''); Investment Company Institute (Jun. 1, 2018) (''ICI II''); IRIS Business Services Limited (Mar. 27, 2017) (''IRIS''); Hemant Khatod (Mar. 27, 2017) (''Khatod 1''); Hemant Khatod (Mar. 27, 2017) (''Khatod 2''); Suresh Kumar (Mar. 21, 2017) (''Kumar''); Paul Lewis (Mar. 10, 2017) (''Lewis''); Reps. Randy Hultgren, Carolyn Maloney, and Darrell Issa, Members of Congress (Apr. 27, 2017) (''Members of Congress''); Merrill Corporation (May 16, 2017) (''Merrill''); Morningstar, Inc. (May 16, 2017) (''Morningstar''); Octachoron Limited (May 15, 2017) (''Octachoron''); Bill Palmer (May 12, 2017) (''Palmer''); Laurie A. Pergamit (May 2, 2017) (''Pergamit''); Somnath Ray (May 17, 2017) (''Ray''); Daniel C. Sweeney (Mar. 27, 2017) (''Sweeney''); TagniFi (Apr. 19, 2017) (''TagniFi''); U.S. Bancorp Fund Services, LLC (May 16, 2017) (''USBFS''); Workiva Inc. (May 23, 2017) (''Workiva I''); Workiva Inc. (Mar. 6, 2018) (''Workiva II''); XBRL International (May 16, 2017) (''XBRL International''); XBRL US (May 16, 2017) (''XBRL US'').

20 *See* Rule 401 of Regulation S–T. In 2005, the Commission began to allow registrants to voluntarily submit financial information in XBRL form as exhibits to periodic reports and Investment Company Act filings. *See* Release No. 33–8529 (Feb. 3, 2005) [70 FR 6556]. In 2007, the voluntary program was expanded to permit risk/return summary submissions. *See* Release No. 33–8823 (Jul. 11, 2007) [72 FR 39289]. As a result of rule amendments adopted by the Commission in 2009, the 2005 XBRL Voluntary Program is now only open for participation by investment companies and other entities that prepare their financial statements in accordance with Article 6 of Regulation S–X. *See* 2009 Financial Statement Information Adopting Release and 2009 Risk/Return Summary Adopting Release.

proposed. The discussion below begins with a background description of the existing XBRL requirements and current XBRL practices. The discussion of the amendments is found in Section III.A.

We believe that the use of Inline XBRL may reduce the time and effort associated with preparing XBRL filings, simplify the review process for filers, and improve the quality and usability of XBRL data for investors, market participants, and other data users. The Commission will continue to monitor industry practices and market developments in disclosure technologies. Should future developments suggest that a more efficient or less costly reporting standard would provide at least substantively similar benefits as Inline XBRL, we would evaluate whether changes to our reporting format are appropriate, including, without limitation, designating another reporting standard as an alternative to Inline XBRL for some or all aspects of the rule.

II. Background and Economic Baseline

A. Overview of Existing XBRL Requirements for Operating Companies and Funds

The XBRL requirements for the required information are located in the Interactive Data File provisions of Regulation S–K; [21] Forms F–10,[22] 20–F,[23] 40–F,[24] 6–K,[25] and N–1A; [26] Rule 405 of Regulation S–T; and the EDGAR Filer Manual.[27]

Operating companies are required to submit financial statements and any applicable financial statement schedules in XBRL as exhibits to certain Exchange Act reports and Securities Act registration statements.[28] In general, operating companies that prepare their financial statements in accordance with U.S. GAAP or in accordance with IFRS as issued by the IASB must submit their financial statements to the Commission in XBRL. Filers that are required to provide information in XBRL must use the taxonomies specified on the Commission's website.[29]

Funds are required to submit risk/return summary information in XBRL as exhibits to registration statements and to prospectuses with risk/return summary information that varies from the registration statement.[30]

An operating company generally must submit the Interactive Data File as an exhibit to the relevant Related Official Filing.[31] Funds are required to submit the Interactive Data File within 15 business days of (1) the effective date of the registration statement or post-effective amendment that contains the related information,[32] or (2) the filing of a form of prospectus made pursuant to paragraph (c) or (e) of Rule 497.[33] Operating companies and funds may delay submission and posting to the extent provided under a hardship exemption.[34]

When filers submit XBRL exhibits during EDGAR filing, the XBRL exhibits are validated for compliance with certain EDGAR Filer Manual technical requirements before the attachments are accepted. During EDGAR filing, EDGAR validates XBRL documents that make up an Interactive Data File, producing error and warning messages when issues with the XBRL data are identified. EDGAR also ''renders''—creates a human-readable version of—XBRL data that can be viewed on the EDGAR website. EDGAR users can view a rendered version of the tagged information submitted in the XBRL exhibit by clicking on the ''Interactive Data'' button next to the relevant filing on EDGAR.

For both operating companies and funds, the Interactive Data File submitted to the Commission also must be posted on the filer's website, if any, on the earlier of the calendar day that the filer submitted or was required to submit it.[35] Operating companies must keep the Interactive Data File posted for at least 12 months.[36] Funds must keep the Interactive Data File posted until the registration statement or post-effective amendment to which the Interactive Data File relates is no longer current.[37]

Currently, the requirement for operating companies to submit and post financial statement information in XBRL applies through the exhibit requirements of Item 601(b)(101) of Regulation S–K [38] and Forms F–10,[39] 20–F,[40] 40–F,[41] and 6–K.[42] Similar requirements for funds to submit and post risk/return summary information in XBRL apply through the exhibit requirements of Form N–1A [43] and Rule 497.[44] These exhibit requirements specify when information in the Related Official Filing triggers the requirement to submit and post an Interactive Data File in the manner provided by Rule 405 of Regulation S–T.[45] Rule 405 sets forth the basic content, format, submission, and posting requirements for the Interactive Data File, such as the requirement to submit the Interactive Data File as an exhibit to the Related Official Filing.[46] Rule 405 also requires

[21] *See* Item 601(b)(101) of Regulation S–K [17 CFR 229.601(b)(101)].

[22] *See* Paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10.

[23] *See* Paragraph 101 of the Instructions as to Exhibits of Form 20–F.

[24] *See* Paragraph B.(15) of the General Instructions to Form 40–F.

[25] *See* Paragraph C.(6) of the General Instructions to Form 6–K.

[26] *See* General Instruction C.3.(g) to Form N–1A.

[27] The EDGAR Filer Manual sets forth the technical formatting requirements for the presentation and submission of electronic filings through the EDGAR system. EDGAR performs automated collection, validation, indexing, acceptance, and forwarding of submissions by companies and others who are required to file forms with the Commission. *See https://www.sec.gov/edgar/aboutedgar.htm* (retrieved Jun. 20, 2018).

[28] Financial statements in XBRL are required as exhibits to Exchange Act reports on Forms 10–Q, 10–K, 20–F, 40–F, and, in some cases, 8–K and 6–K. Financial statements in XBRL also are required as exhibits to Securities Act registration statements that contain financial statements, such as Form S–1 (except registration statements filed in connection with an initial public offering). Securities Act registration statements that do not contain financial statements, such as a Form S–3 or other form filed by an issuer that incorporates by reference all required financial statement information from its periodic reports, and Exchange Act registration statements are not required to include Interactive Data Files. *See* 2009 Financial Statement Information Adopting Release.

[29] *See* Rule 405(c)(1) of Regulation S–T.

[30] *See* General Instruction C.3.(g) to Form N–1A.

[31] *See* Rule 405(a) of Regulation S–T.

[32] *See* General Instruction C.3.(g)(i), (iv) to Form N–1A.

[33] *See* General Instruction C.3.(g)(ii), (iv) to Form N–1A.

[34] An operating company may delay the submission and posting of the Interactive Data File to the extent provided under a temporary or a continuing hardship exemption. *See* Rules 201 and 202 of Regulation S–T. A fund filer may delay the submission and posting of the Interactive Data File to the extent provided under a continuing hardship exemption. *See* Rule 202 of Regulation S–T.

[35] *See* Rule 405(g).

[36] *Id.*

[37] *See* Rule 405(g) and General Instruction C.3.(g)(iii) to Form N–1A.

If a fund does not submit or post interactive data as required, its ability to file post-effective amendments to its registration statement under Rule 485(b) under the Securities Act is automatically suspended until it submits and posts the interactive data as required. *See* Rule 485(c) under the Securities Act. The Interactive Data File also must be submitted in such a manner that will permit the information for each series and, for any information that does not relate to all of the classes in a filing, each class of the fund to be separately identified. *See* General Instruction C.3.(g)(iv) to Form N–1A.

[38] The exhibit requirements of Item 601(b)(101) relate to Forms S–1, S–3, S–4, S–11, F–1, F–3, F–4, 8–K, 10–Q, and 10–K.

[39] *See* Paragraph (101) of Part II (Information Not Required to be Delivered to Offerees or Purchasers) of Form F–10.

[40] *See* Paragraph 101 of the Instructions as to Exhibits of Form 20–F.

[41] *See* Paragraph B.(15) of the General Instructions to Form 40–F.

[42] *See* Paragraph C.(6) of the General Instructions to Form 6–K.

[43] *See* General Instruction C.3.(g) to Form N–1A.

[44] *See* Rule 497(c), (e).

[45] The exhibit provisions that specify when an Interactive Data File is required for financial information also specify when it is optional and when it is prohibited.

[46] *See* Rule 405(a)(2) for the exhibit requirement.

that an Interactive Data File be submitted in accordance with the EDGAR Filer Manual.[47] The EDGAR Filer Manual contains additional formatting and submission requirements for the Interactive Data File.

On June 13, 2016, the Commission issued an exemptive order under the Exchange Act to permit operating companies that comply with certain conditions listed in the order to file structured financial statement data required in their periodic and current reports using Inline XBRL through March 2020, in lieu of filing all their XBRL data in a separate exhibit.[48]

B. Current XBRL Practices and Affected Parties

1. XBRL Preparation

There were approximately 8,315 filers of annual and quarterly reports (Forms 10–K, 10–Q, 20–F, and 40–F), including amendments, during calendar year 2017.[49] As of December 2017, there were approximately 11,181 funds registered on Form N–1A.[50] Filers may prepare their Interactive Data to comply with existing XBRL requirements in-house or use an outside service provider.[51] Tagging required disclosures in XBRL may involve either a standalone or integrated approach.[52]

In 2009 the Commission estimated the expected direct cost of compliance with XBRL requirements by operating companies.[53] After the adoption of the 2009 rules, several pre-proposal commenters and studies provided estimates of the cost of compliance with financial statement information XBRL requirements.[54] According to a 2013 survey, the median operating company filer required 25 hours for the preparation and 15 hours for the review of XBRL and between $8,000 and $10,000 for the services of outside professionals for its most recent annual filing.[55] According to another survey, the median small filer paid $10,000 or less on an annual basis for fully outsourced creation and filing of its XBRL exhibits.[56] Preliminary statistics from a pricing survey being conducted by the AICPA and XBRL US indicate that the cost of XBRL formatting has declined 41% since 2014 and that the average cost of XBRL preparation for small reporting companies in 2017 averaged $5,850 per year.[57] The 2009 Risk/Return Summary Adopting Release estimated the expected direct cost of compliance with the fund risk/return summary XBRL requirements.[58]

2. Voluntary Use of Inline XBRL by Operating Companies Under the Exemptive Order

A small but growing number of operating company filers have relied on the Exemptive Order to voluntarily file in Inline XBRL.[59] Large accelerated, accelerated, and nonaccelerated filers and smaller reporting companies were well represented, with large accelerated filers representing a larger proportion of voluntary operating company filers than their proportionate share of all operating company filers.[60]

Filers that have filed in Inline XBRL under the Exemptive Order used XBRL preparation software or filing agents that already can accommodate Inline XBRL. Based on filing software information, where available in the filing, voluntary Inline XBRL filers used seven different vendors.[61] In conjunction with the Exemptive Order, the Commission also made the open source Inline Viewer available to the public so that filers could test and view their submissions before EDGAR filing and the public could easily view the Inline XBRL document within the context of a web browser.

One commenter—whose vendor members are estimated by the commenter to ‘‘provide XBRL creation services for an estimated 80% of U.S. public companies that file in XBRL to the SEC each quarter’’—stated that ‘‘[m]any vendors today already have Inline XBRL capabilities or have development underway’’ to incorporate this capability into their tools.[62]

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[47] *See* Rule 405(a)(3).

[48] *See* Order Granting Limited and Conditional Exemption under Section 36(a) of the Securities Exchange Act of 1934 from Compliance with Interactive Data File Exhibit Requirement in Forms 6–K, 8–K, 10–Q, 10–K, 20–F, and 40–F to Facilitate Inline Filing of Tagged Financial Data, Release No. 34–78041 (Jun. 13, 2016) [81 FR 39741] (‘‘Exemptive Order’’).

[49] The figures are based on staff analysis of EDGAR filings. Filers were identified based on Central Index Key (‘‘CIK’’) codes. Some filers, including investment companies, asset-backed issuers, and filers who have received a hardship exemption, are not subject to financial statement information interactive data requirements. Interactive data requirements for operating companies also pertain to certain Securities Act registration statements, as well as certain filings on Forms 8–K and 6–K containing specified financial statements.

[50] The figures are based on data obtained from ICI as of December 31, 2017, available at *http://www.ici.org/research/stats,* and staff analysis of EDGAR filings. This count includes 9,360 mutual funds and 1,821 ETFs registered as open-end investment companies. The estimate of ETFs is reduced to exclude approximately eight ETFs registered as unit investment trusts (‘‘UITs’’). UITs and closed-end funds are not subject to the proposed amendments and are therefore excluded from this estimate.

[51] *See* Inline XBRL Proposing Release, at 14285. *See also* William Sinnett, SEC reporting and the impact of XBRL: 2013 survey, Financial Executives Research Foundation (Nov. 15, 2013) (‘‘FERF Study’’), at 15.

[52] *See* Inline XBRL Proposing Release, at 14285. With a standalone approach, filers or filing agents create an XBRL exhibit by copying the information from the filing document and tagging it in XBRL, which requires them to expend incremental resources to create and tag a copy of the data and verify the consistency of tagged data across documents. With an integrated approach, XBRL tagging of required disclosures is a part of a broader disclosure management process, and integrated disclosure management software is used to generate both the HTML filing and the XBRL exhibit.

[53] *See* 2009 Financial Statement Information Adopting Release, at 6804 (estimating direct costs of preparing and submitting interactive data-formatted financial statements, excluding the cost of website posting, at $39,510–$81,220 ($12,450–$20,340) for the first submission (each subsequent submission) with block-text footnotes and schedules and $29,700–$59,150 ($20,075–$36,940) for the first submission (each subsequent submission) with detailed tagging of footnotes and schedules, and the cost of website posting at $1,000 per year).

[54] *See* Inline XBRL Proposing Release, at 14285–6, n. 69.

[55] *See* FERF Study, at 18–19.

[56] *See* Research shows XBRL filing costs are lower than expected, AICPA, *https://www.aicpa.org/InterestAreas/FRC/AccountingFinancialReporting/XBRL/DownloadableDocuments/XBRL%20Costs%20for%20Small%20Companies.pdf* (retrieved Jun. 20, 2018) (‘‘AICPA Study’’); Mohini Singh (2017) *The Cost of Structured Data: Myth* vs. *Reality,* CFA Institute, *https://www.cfapubs.org/doi/pdf/10.2469/ccb.v2017.n5.1* (retrieved Jun. 20, 2018).

[57] *See https://xbrl.us/wp-content/uploads/2018/06/XBRL-US-Letter-to-HFSC-RE-HR-5054-6-6-2018.pdf* (retrieved Jun. 20, 2018).

[58] *See* 2009 Risk/Return Summary Adopting Release, at 7769 (estimating direct costs of preparing and submitting interactive data-formatted risk/return summary information, excluding the cost of website posting, at $23,200 for the first submission ($3,100 for each subsequent submission) and the cost of website posting at $250).

One commenter stated that it uses a third-party vendor for XBRL preparation and estimated the average time the commenter expends to review the approximately 336 risk/return summary XBRL filings per year produced for its funds at approximately 12 hours per month, with a peak of 32 hours per month. *See* letter from Federated II. This amounts to an average review time of approximately 0.43 hours per filing (12 hours per month × 12 months/336 filings per year). The cost of outside services for XBRL preparation, which are incurred in addition to the review time, is not stated in this letter.

[59] Based on staff analysis of Inline XBRL filings, as of May 21, 2018, approximately 152 unique operating company filers filed approximately 526 Inline XBRL filings. The number of filers that have voluntarily filed in Inline XBRL so far is modest relative to the overall number of filers (approximately 1.8%).

[60] As of May 21, 2018, staff analysis of voluntary Inline XBRL filings showed that large accelerated filers accounted for approximately 38% and accelerated filers approximately 18% of such filings. By comparison, based on staff analysis of Forms 10–K, 10–Q, 20–F, and 40–F filings and amendments to them filed during calendar year 2017, large accelerated filers accounted for approximately 26% and accelerated filers for approximately 19% of such filings.

[61] This estimate is based on filings information as of May 21, 2018.

[62] *See* letter from XBRL US. *See also* letters from Workiva I, IRIS, and ACI.

Continued

Based on our understanding of the experience of voluntary Inline XBRL filers and the input from commenters whose XBRL solutions were used in voluntary Inline XBRL filings, filers have not incurred increases in the cost of XBRL software.[63] We recognize, however, that filers that voluntarily elected to file in Inline XBRL under the Exemptive Order may not be representative of all filers affected by the amendments. For example, most voluntary filers already used integrated XBRL preparation software. Thus, their transition to Inline XBRL likely entailed minimal changes to XBRL preparation workflow, with the resulting minor impact on both the cost of XBRL preparation and XBRL data quality.

With regard to data quality of voluntary Inline XBRL filings by operating companies under the Exemptive Order, Commission staff reviewed a random sample of 25 Form 10–Q and Form 10–K Inline XBRL filings submitted pursuant to the Exemptive Order as of November 1, 2017[64] to determine whether Inline XBRL had any effect on a particular issue of data quality: Negative values.[65] For each of the 25 filings, Commission staff reviewed the Inline XBRL filing and the latest filing prior to the Inline XBRL filing to determine if amounts were inappropriately entered as negative values in either of the filings. Commission staff observed one Inline XBRL filing with an inappropriate negative value for a footnote disclosure; the same disclosure in the latest filing prior to the Inline XBRL filing did not have an inappropriate negative value. After the initial Inline XBRL filing, that filer submitted a subsequent Inline XBRL filing and corrected the error.

One commenter stated that XBRL data quality has not improved significantly, based on errors in XBRL data identified during the commenter's review of early voluntary Inline XBRL filings pursuant to the Exemptive Order.[66] However, the example provided by the commenter of an Inline XBRL tagging error was not an error in the Inline XBRL document, but rather a presentation discrepancy when the Inline XBRL document was run through the EDGAR Renderer, which is designed for XBRL format documents and not Inline XBRL format documents. In part of the example provided, the Inline XBRL document had a dimensional axis that does not present in the EDGAR rendered view.

Nevertheless, these observations suggest that some XBRL data quality issues may remain for a minority of filers. The relatively small number of voluntary Inline XBRL filings to date makes it difficult to draw definitive conclusions about the extent to which Inline XBRL may improve data quality going forward. Moreover, we are not able to observe whether the reviewed voluntary filings were prepared with the use of the Inline XBRL Viewer tool, which can facilitate detection of certain types of errors, such as negative values and scaling errors. In addition, the experience of a small number of voluntary filers may not be representative of all filers subject to the amendments.

Since the implementation of the voluntary Inline XBRL program, we have observed that, not only is the public using the Inline XBRL data, but some data users have also made enhancements to the Commission's open source Inline XBRL Viewer. These enhancements, such as creating instantly human-readable time series charting, may help to make the XBRL data even more useful. For example, using these enhancements, a user can hover over the revenues element of a filing and instantly view the latest two years of reported revenues for that filer, or hover over a narrative element and instantly view the latest two years of text reported for that element by that filer.

3. XBRL Data Use

There is a wide range of XBRL data users, including investors, financial analysts, economic research firms, data aggregators, academic researchers, filers seeking information on their peers for benchmarking purposes, and Commission staff.

During the second quarter of 2017, individual financial statement information XBRL exhibits were accessed on the EDGAR website approximately 53.1 million times (including approximately 13.7 million unique filing views by approximately 149,000 unique IP addresses) and individual risk/return summary XBRL exhibits were accessed approximately 6.8 million times (including approximately 839,000 unique filing views by approximately 8,000 unique IP addresses).[67] This is the approximate equivalent of 287 exhibit views and 74 unique filing views for each filing with financial statement information XBRL data and 224 exhibit views and 28 unique filing views for each filing with risk/return summary XBRL data during the examined quarter.

The Commission also combines, organizes and posts for bulk download financial statement information and risk/return summary XBRL data extracted from filings.[68] As of June 16,

Vendors identified as having been used in voluntary Inline XBRL filings and other software vendors and filing agents that reference Inline XBRL capabilities on their websites, and in other public sources, accounted for approximately 87% of financial statement XBRL filings filed during 2017 for which preparation software could be identified. Preparation software could not be identified for approximately 3% of financial statement XBRL filings.

[63] *See, e.g.,* letters from Workiva I and ACI. Both of these commenters were vendors whose XBRL preparation solutions were used by voluntary Inline XBRL filers.

[64] The examined subset of filings was randomly drawn from 252 Inline XBRL filings submitted as of November 1, 2017.

[65] Most XBRL numeric elements are designed to be entered as positive values. Even if the XBRL element is related to a credit balance, the element should still be submitted as a positive number because debit and credit balances represent presentation attributes for the HTML document, not the underlying meaning of the XBRL element.

[66] *See* letter from TagniFi.

[67] The figures are based on staff analysis of EDGAR log file data for the second quarter of 2017. The analysis examined access during the second quarter of 2017 to all financial statement information XBRL exhibits filed with annual and current reports and amendments to them and all risk/return summary XBRL exhibits filed with amendments to registration statements and forms of prospectuses since inception of the XBRL requirements. The analysis did not exclude access by ''bots'' because machine-readable XBRL data is designed to enable automated aggregation and processing. Due to data availability, these statistics do not capture access to XBRL data through the Public Dissemination Service or the use of the data, tools, and products made available by third-party data aggregators, incorporating XBRL data to varying degrees, which likely account for the largest share of market participants' access to such data. These statistics also do not capture access to DERA XBRL datasets, which is discussed separately. The data definitions used to identify XBRL exhibits excluded access to XBRL data as part of a complete submission file or as part of an Inline XBRL document (for filings pursuant to the Exemptive Order).

Applying the same methodology, individual XBRL files of nonaccelerated filers and smaller reporting companies were accessed on the EDGAR website approximately 23.3 million times (including approximately 6.2 million unique filing views by approximately 46,000 unique IP addresses). This is the approximate equivalent of 239 exhibit views (64 unique filing views) per filing. Filer status was obtained from the XBRL portion of the respective filing. Applying the same methodology, individual XBRL files of biotechnology companies were accessed on the EDGAR website approximately 4.9 million times (including approximately 1.3 million unique filing views by approximately 24,000 unique IP addresses). This is the approximate equivalent of 288 exhibit views (78 unique filing views) per filing. Companies were classified as being in the biotechnology sector based on primary Standard Industry Classification (''SIC'') codes (obtained from the XBRL portion of the respective filing) that correspond to industry groups for pharmaceutical products and medical equipment in the Fama and French 49 industry classification (*http://mba.tuck.dartmouth.edu/pages/faculty/ken.french/Data_Library/det_49_ind_port.html,* retrieved Jun. 20, 2018).

[68] *See https://www.sec.gov/dera/data/financial-statement-data-sets.html, https://www.sec.gov/dera/data/financial-statement-and-notes-data-set.html,* and *https://www.sec.gov/dera/data/mutual-fund-prospectus-risk-return-summary-data-sets* (retrieved Jun. 20, 2018).

2018, in the approximately eight months since the Commission began posting risk/return summary datasets, financial statement data sets had approximately 55,327 page views (including approximately 33,130 unique page views); financial statement and notes data sets had approximately 232,398 page views (including 194,623 unique page views), and risk/return summary data sets had approximately 2,089 page views (including approximately 1,791 unique page views).[69]

A number of businesses have created products that provide XBRL data to investors. Data aggregators (*i.e.,* entities that, in general, collect, package, and resell data) have incorporated XBRL data into their products to varying degrees. Various third-party data providers extract or preview information contained in XBRL exhibits, offering XBRL analytics tools or using XBRL data to supplement other reported data based on filer disclosures.[70]

The Commission staff uses XBRL data to efficiently analyze large quantities of information in support of risk assessment, rulemaking, and enforcement activities, including as part of its internally developed Corporate Issuer Risk Assessment and Financial Statement Query Viewer applications.

Commenters and studies have noted the benefits of XBRL data in providing a wide range of financial reporting data that is not always available elsewhere.[71] Other commenters and studies have indicated that XBRL data use has been limited, in part due to concerns regarding data quality and lack of awareness of XBRL.[72] Several commenters stated that risk/return summary XBRL data is little used by investors.[73] Some commenters stated that the use of risk/return summary XBRL data is limited due to the delay in its availability as compared to the HTML version of the same information.[74] One of these commenters, a large data aggregator that processes fund information for investors, indicated that it must manually extract information from fund HTML filings because the structured XBRL filing comes too late for investors' preferences.[75]

The 2005 XBRL Voluntary Program for financial statement information has not been used for several years, with no submissions during calendar years 2011–2017.[76]

III. Final Amendments and Anticipated Economic Effects

A. Discussion of the Final Amendments

1. Inline XBRL Requirements

a. Use of Inline XBRL Format

On March 1, 2017, the Commission proposed rule and form amendments to facilitate improvements in the quality and usefulness of XBRL data and, over time, decrease filing costs by decreasing XBRL preparation costs.[77] The proposed amendments would require operating company financial statement information and fund risk/return summary information to be submitted in the Inline XBRL format.[78] Inline XBRL allows filers to embed XBRL data directly into an HTML document, eliminating the need to tag a copy of the information in a separate XBRL exhibit. Inline XBRL is both human-readable and machine-readable for purposes of validation, aggregation, and analysis. The proposed amendments also would eliminate the requirements for filers to post Interactive Data Files on their websites and terminate the 2005 XBRL Voluntary Program with respect to financial statement information.[79]

The majority of commenters generally supported the proposed Inline XBRL requirements.[80] Many of these commenters specifically supported the proposal to replace the XBRL format with the Inline XBRL format for operating company filers,[81] while several commenters supported applying the proposed Inline XBRL requirements to both operating companies and funds.[82] Several commenters opposed the proposed Inline XBRL requirements for some or all filers.[83]

After considering these comments, we are adopting, substantially as proposed, amendments to Rule 405 to require the submission of financial statement information and risk/return summary information Interactive Data Files in Inline XBRL.[84] Operating companies and funds, on a phased in basis, will be required to embed a part of the

[69] These statistics do not account for the use of third-party products or websites incorporating these datasets. *See, e.g., https://console.cloud.google.com/launcher/details/sec-public-data-bq/sec-public-dataset* (retrieved Jun. 20, 2018).

[70] *See, e.g.,* a discussion of XBRL analytics tools, *https://xbrl.us/use/howto/* (retrieved Jun. 20, 2018); *https://xbrl.us/home/category/productsservices/service/data-aggregation/* (retrieved Jun. 20, 2018); Mitchell R. Wenger, Rick Elam, and Kelly L. Williams (2013) A tour of five XBRL tools, *Journal of Accountancy* (Apr. 1, 2013), *https://www.journalofaccountancy.com/issues/2013/apr/20126677.html* (retrieved Jun. 20, 2018); Inline XBRL Proposing Release, at 14286, n. 77; letters from Octachoron and TagniFi.

[71] *See, e.g.,* letters from CFA Institute, Data Coalition, Grant Thornton, Members of Congress, Octachoron, TagniFi, XBRL US, and XBRL International.

Various academic studies have examined the benefits of XBRL for the information environment of firms. *See* Inline XBRL Proposing Release, at 14295, n. 169. *See also* Yu Cong, Hui Du, and Miklos A. Vasarhelyi (2017) Are XBRL files being accessed? Evidence from the SEC EDGAR log file data set, *Journal of Information Systems* (forthcoming) (examining rates of access to XBRL files and providing some evidence that investors in smaller operating companies access XBRL files and that investors may prefer XBRL files to non-XBRL files when both types of files are included with the filing).

[72] *See* Inline XBRL Proposing Release, at 14287, n. 78. *See also* letter from BIO (stating that ''XBRL data is little used by biotech investors''). *But see* note 67 above (discussing XBRL data use for smaller and biotech companies that is generally consistent with the XBRL data use for all operating companies).

A December 2016 global survey of members by the CFA Institute, corroborating the results of the prior surveys, found that less than half of the respondents (approximately 45%) were aware of XBRL and, among those aware of XBRL, a minority of respondents (approximately 23%) use financial XBRL data from periodic reports. *See* CFA Institute Member Survey: XBRL, *https://blogs.cfainstitute.org/marketintegrity/2016/12/05/do-you-know-what-xbrl-is-a-majority-of-survey-respondents-do-not-know/* and *https://www.cfainstitute.org/-/media/documents/survey/xbrl-member-survey-report-2016.ashx* (retrieved Jun. 20, 2018).

[73] *See* letters from Federated I and II, Frei, ICI I and II, and USBFS. One of these letters cited limited use of XBRL data posted on the filer's website in connection with the discussion of limited XBRL data use. *See* letter from Federated II.

[74] *See, e.g.,* letters from Morningstar (''we use the HTML filings rather than the XBRL filings because we can process them and share the information with end investors more quickly than if we were to wait for the XBRL filing'') and XBRL US (''[r]isk/return data from mutual funds today is not as timely as investors would prefer'').

[75] *See* letter from Morningstar.

[76] A few filers submitted Voluntary Program XBRL exhibits (EX100), but those filings seem to have been made in error.

[77] *See* Inline XBRL Proposing Release.

[78] Inline XBRL™ and iXBRL™ are trademarks of XBRL International. XBRL® is a registered trademark of XBRL International. The Inline XBRL technology is freely licensed by XBRL International. *See https://specifications.xbrl.org/spec-group-index-inline-xbrl.html* (retrieved Jun. 20, 2018) and *https://specifications.xbrl.org/presentation.html* (retrieved Jun. 20, 2018).

[79] *See* note 20 above.

[80] *See, e.g.,* letters from ACI, AICPA, CFA Institute, Data Coalition, Deloitte, Grant Thornton, Hoffman, IRIS, Lewis, Kumar, Members of Congress, Merrill, Morningstar, Octachoron, Palmer, TagniFi, Workiva I, XBRL International, and XBRL US.

[81] *See, e.g.,* letters from ACI, AICPA, CFA Institute, Data Coalition, Deloitte, Grant Thornton, Hoffman, IRIS, Members of Congress, Merrill, Morningstar, Octachoron, TagniFi, XBRL International, XBRL US, and Workiva I.

[82] *See, e.g.,* letters from ACI, AICPA, CFA Institute, Data Coalition, Members of Congress, Morningstar, XBRL International, and XBRL US.

Two of these commenters elaborated on their specific support to replace the XBRL format with the Inline XBRL format for risk/return summaries. *See* letters from Morningstar and XBRL US.

[83] *See, e.g.,* letters from Cigna and FEI (opposing the Inline XBRL requirement for financial statement information); letters from Hindssight and Pergamit (expressing general opposition to Inline XBRL); and letters from Federated I and II, Frei, ICI I and II, and USBFS (opposing the Inline XBRL requirement for risk/return summaries).

[84] *See* new Rule 405(a)(3).

Interactive Data File within an HTML document using Inline XBRL and to include the rest in an exhibit to that document. The portion filed as an exhibit to the form will contain contextual information about the XBRL tags embedded in the filing. The information as tagged will continue to be required to satisfy all other requirements of Rule 405, including the technical requirements in the EDGAR Filer Manual.

The Inline XBRL requirement, similar to the current XBRL requirement, will apply to financial statement information in HTML regardless of whether it appears in the non-exhibit part of a filing and/or in one or more exhibits. Accordingly, under Inline XBRL, tags must be embedded wherever that HTML information appears.

The Commission received a number of comments that addressed data usability, quality, and cost issues. Various commenters stated that Inline XBRL would, over time, (i) increase the efficiency of review and yield savings of XBRL preparation time and cost; [85] (ii) potentially improve the quality of XBRL data (by reducing discrepancies between HTML and XBRL data); [86] and (iii) increase the data's usability (through greater accessibility and transparency of the data and enhanced capabilities for data users, who would no longer have to view the XBRL data separately from the text of the documents).[87] One commenter stated that while ''Inline XBRL will not directly contribute to increased quality . . . indirectly, Inline XBRL will contribute to better decisions related to the meaning conveyed by the machine-readable XBRL format.'' [88] Another commenter emphasized the benefit of Inline XBRL ''in allowing filers greater control over the presentation of financial exhibits.'' [89]

Several commenters that supported requiring Inline XBRL for financial statement information expressed concern that switching to Inline XBRL would not be sufficient to significantly improve the quality of financial statement information XBRL data without additional measures. Some of these commenters recommended that the Commission implement additional validation rules, including the incorporation of XBRL Data Quality Committee validation rules.[90] Some of these commenters recommended expanding the scope of auditor assurance to include review of XBRL tags.[91] Some commenters encouraged additional engagement or alignment with other entities such as the Financial Accounting Standards Board (''FASB''), the IASB, and international regulators who are also using the Inline XBRL format.[92]

We continue to analyze the data quality of submissions made in XBRL and Inline XBRL, as well as monitor developments related to the XRBL standard and the Inline XBRL specification. If additional technical rules within the EDGAR environment are deemed necessary, they may be reflected in updates to the EDGAR Filer Manual, but we are not imposing additional XBRL validation requirements at this time. We note that filers, vendors, and filing agents are currently able to voluntarily incorporate validation rules into their software and that the Commission makes available various tools to assist XBRL filers. Moreover, filers remain subject to Rule 405(c) of Regulation S–T, which imposes certain fundamental data quality requirements on Interactive Data File submissions.[93]

Regarding our engagement with other entities such as the FASB, we note that the staff actively engages with the FASB over the development of the U.S. GAAP Taxonomy throughout the year. For example, the staff reviews and consults on the taxonomy development process, taxonomy changes, and comments received from the public. We continue to encourage all members of the public to submit any comments they may have to improve the U.S. GAAP Taxonomy to the FASB. As we have noted throughout this release, we are aware of various developments that could impact the Commission's XBRL requirements and will continue to monitor those developments as filers transition to Inline XBRL.

With respect to expanded auditor assurance, one commenter stated that a recent survey of its members found that ''77 per cent of respondents wish to have assurance of the tagged data.'' [94] Another commenter stated that ''audit committees are likely to request that auditors perform a separate attestation engagement to provide an opinion on the accuracy and consistency of the XBRL formatted information, and issue a report'' in order ''to provide investors additional confidence in the iXBRL formatted information.'' [95] However, a different commenter stated that XBRL data cannot be audited because tag selection is subjective and no accounting standards are applicable.[96]

As the Commission stated in the Inline XBRL Proposing Release, the proposed amendments were intended to modernize existing financial statement information XBRL requirements to incorporate developments in the XBRL technology since the 2009 adoption of these requirements. The proposal did not contemplate any changes to the application of officer certifications or auditor assurance requirements to XBRL data.[97] In particular, the Commission noted that, because the proposed amendments related only to the manner of submitting the Interactive Data File and not the data that comprises the Interactive Data File, it was not proposing to change the existing positions pertaining to the exclusion of the Interactive Data File from the officer certification and assurance requirements.[98] Consistent with the

[85] *See, e.g.,* letters from ACI, AICPA, CFA Institute, Cigna, Data Coalition, FEI, IRIS, Kumar, Lewis, Members of Congress, Merrill, Workiva I, XBRL International, and XBRL US. *But see* letter from ICI I (stating that funds will not realize a significant increase in the effectiveness and efficiency of XBRL preparation) and letter from Pergamit (stating that Inline XBRL would not yield benefits for filers).

[86] *See, e.g.,* letters from ACI, AICPA, CFA Institute, IRIS, Kumar, Lewis, Members of Congress, Merrill, Morningstar, Octachoron, Palmer, Ray, XBRL International, and XBRL US. *But see, e.g.,* note 107 below (stating that there would not be gains in data quality for risk/return summaries) and letters from EY, TagniFi, and Workiva I (stating that there would not be gains in data quality for financial statement information).

[87] *See, e.g.,* letters from ACI, AICPA, CFA Institute, Deloitte, IRIS, Morningstar, Octachoron, Ray, TagniFi, and XBRL US. *But see* letters from Federated I and II (regarding risk/return summaries) and Pergamit.

[88] *See* letter from Hoffman.

[89] *See* letter from Octachoron.

[90] *See, e.g.,* letters from AICPA, CFA Institute, Deloitte, TagniFi, Workiva I, XBRL International, and XBRL US.

[91] *See, e.g.,* letters from AICPA, CFA Institute, Deloitte, EY, Grant Thornton, Hoffman, XBRL International, and XBRL US.

[92] *See, e.g.,* letters from AICPA, EY, and XBRL International.

[93] 17 CFR 232.405(c)(1). In particular, each data element in the Interactive Data File must reflect the same information in the corresponding data in the Related Official Filing; data elements contained in the corresponding data in the Related Official Filing may not be changed, deleted, or summarized in the Interactive Data File; and each data element contained in the Interactive Data File must be matched with an appropriate tag from the most recent version of the standard list of tags specified by the EDGAR Filer Manual, with a new special element required to be created and used only if an appropriate tag does not exist in the standard list.

[94] *See* letter from CFA Institute.

[95] *See* letter from AICPA.

[96] *See* letter from Workiva I.

[97] *See* Inline XBRL Proposing Release, at 14297, n. 181 and accompanying text.

[98] *Id.* Currently, the financial statement information Interactive Data File is excluded from the officer certification requirements under Rules 13a–14(f) and 15d–14(f) of the Exchange Act [17 CFR 240.13a–14 and 240.15d–14]. Furthermore, auditors are not required to apply AS 2710 (*Other Information in Documents Containing Audited Financial Statements*), AS 4101 (*Responsibilities Regarding Filings Under Federal Securities Statutes*), or AS 4105 (*Reviews of Interim Financial Information*) (prior to December 31, 2016, AU

proposal, we are not making any such changes at this time.

Several commenters recommended clarifying that financial statement information XBRL data under the new Inline XBRL requirement would not be subject to auditor assurance in order to address a potential ''expectations gap'' that might arise if XBRL data is embedded in a document containing HTML financial statements subject to auditor assurance. Commenters had different suggestions on how to communicate the auditor's responsibility related to financial statement information XBRL data, such as by including some form of reporting mechanism or disclosure within the filing, or by having the Commission re-affirm its position from the Inline XBRL Proposing Release that there is no change in auditor responsibility.[99]

Consistent with the suggestions of these commenters, we are reiterating that the change from the XBRL format to the Inline XBRL format does not change the Commission's positions with respect to officer certifications and auditor assurance. Accordingly, we are not requiring additional transparency regarding auditors' responsibilities related to financial statement information XBRL data at this time. However, consistent with the existing XBRL requirements, issuers would not be prohibited from indicating in the financial statements (such as in a footnote) the degree (or lack thereof) of auditor involvement related to the financial statement information XBRL data.[100]

A few commenters cited concerns about the burden of transition to Inline XBRL.[101] The amendments address transition issues through the use of a staggered phase-in period, discussed in greater detail in Section III.A.1.c below. Further, in response to commenter concerns, we are making certain modifications from the proposed compliance dates to help filers address any transition issues. In particular, in response to commenters' suggestions, the amendments include an additional transition accommodation for operating companies whereby Inline XBRL will be required for the first Form 10–Q for a fiscal period ending on or after the applicable compliance date, which is intended to further facilitate the transition to Inline XBRL. The amendments also modify the phase-in period for funds to provide funds and vendors with additional time to transition to Inline XBRL for risk/return summaries and to modify their processes for preparing and reviewing these filings to accommodate the elimination of the 15 business day filing period. We believe that these aspects of the amendments will help to mitigate the burden of transition to Inline XBRL.

As proposed, the amendments will also require risk/return summary information to be submitted in Inline XBRL.[102] Among commenters that addressed the Inline XBRL requirement for funds, several commenters expressed support for Inline XBRL for risk/return summaries.[103] Some of these commenters cited the potential benefits of increased timeliness and usability of XBRL data to investors and other data users.[104] They also described economies of scale that funds may realize from their vendors providing an XBRL preparation process that is consistent with operating companies under a single standard specification.[105] Several commenters opposed the Inline XBRL requirement for risk/return summaries.[106] These commenters stated that there are few, if any, data quality issues with risk/return summary XBRL data today and concluded that Inline XBRL would not improve the quality of risk/return summary XBRL data.[107] One commenter stated that the proposed Inline XBRL requirements for funds do not have tangible benefits for investors and impose costs that would outweigh any benefits.[108]

Commenters also expressed differing views regarding the extent to which investors, Commission staff, and academics use the fund information submitted in XBRL. Some commenters stated that XBRL data filed by funds is little used by investors[109] or data aggregators.[110] Others stated that it was used by data aggregators and, if more timely provided, its use by data aggregators and, indirectly, by investors, would increase.[111] Two commenters observed that the current 15 business day filing delay decreases the usefulness of this data as a means of providing timely information to investors and stated that they or others would make greater use of this data if we eliminated the delay.[112]

After considering the input of commenters, we continue to believe that it is important for risk/return summary information to be provided in an XBRL

Sections 550, 711, and 722, respectively) to the Interactive Data File submitted with a company's reports or registration statements. In addition, filers are not required to obtain assurance on their Interactive Data File or involve third parties, such as auditors or consultants, in the creation of their Interactive Data File. *See* 2009 Financial Statement Information Adopting Release, at 6796–6797. However, the Commission has previously stated that XBRL is part of an issuer's disclosure controls and procedures. *See* 2009 Financial Statement Information Adopting Release, at 6797.

Risk/return summary information Interactive Data File requirements do not require funds to involve third parties, such as auditors or consultants, in the creation of the interactive data provided as an exhibit to a fund's Form N–1A filing, including assurance. With respect to registration statements, SAS 37 (currently AS 4101) was issued in April 1981 to address the auditor's responsibilities in connection with filings under the federal securities statutes. With respect to existing risk/return summary information Interactive Data File requirements, an auditor is not required to apply AS 4101 to the Interactive Data File. *See* 2009 Risk/Return Summary Adopting Release, at 7760–7761 and footnote 183.

[99] *See, e.g.,* letters from AICPA, Deloitte, EY, and Grant Thornton.

[100] *See* 2009 Financial Statement Information Adopting Release, at 6796.

[101] *See, e.g.,* letters from Cigna and FEI (regarding the burden of transition for operating companies); Hindsight (expressing concern about costs but not specifying whether it pertained to operating companies or funds); Federated I and II, Frei, ICI I and II, and USBFS (regarding the burden of transition for funds).

[102] *See* new Rule 405(a)(3)(ii) of Regulation S–T.

[103] *See, e.g.,* letters from ACI, AICPA, CFA Institute, Data Coalition, Members of Congress, Morningstar, XBRL International, and XBRL US.

[104] *See* letters from Morningstar and XBRL US.

[105] *Id.*

[106] *See, e.g.,* letters from Federated I and II; Frei; ICI I and II; and USBFS. In addition, two commenters generally opposed Inline XBRL without stating whether their opposition was specific to funds or operating companies. *See* letters from Pergamit and Hindsight.

[107] *See* letters from ICI (reiterating the observation in the Inline XBRL Proposing Release that, compared to financial statements of operating companies, mutual fund risk/return summaries have fewer instances in which numeric data is embedded into text and the data is generally more standardized as a reason why, in the commenter's view, data quality is not an issue for mutual fund risk/return summaries) and USBFS (stating that it was not aware of any XBRL filing data quality issues affecting the funds serviced by the commenter or any other funds in the industry).

[108] *See* letter from Federated II.

[109] *See* letters from Federated I (stating that it does ''not believe that either XBRL, or the proposed iXBRL filing and posting requirements are (or would be) useful to investors.''); Federated II; Frei (''There has been no evidence that the SEC staff, academics, or every day investors uses [sic] this data.''); ICI I (stating that investors generally do not use XBRL tagged risk/return summary information and instead obtain this risk/return information in human-readable form from fund prospectuses, on fund websites, or on third party information provider websites.''); ICI II; USBFS (stating that the XBRL data is generally not used by investors, investment advisers, or broker-dealers in making investment decisions or recommendations).

[110] *See* letter from ICI (stating that its members provide data directly to many information providers and further noting that these information providers separately extract data from HTML filings).

[111] *See* letters from Frei and USBFS (referencing XBRL data use by data aggregators) and XBRL US (noting Morningstar's support of eliminating the 15 day filing period as it would allow them to use the XBRL data to more rapidly disseminate fund data to investors).

[112] *See* letters from Morningstar (noting that it currently uses the HTML filings rather than the XBRL filings because it can process and share the information with investors more quickly than if it were to wait for the XBRL filing) and XBRL US (stating that the elimination of the 15 business day period would make XBRL data much more valuable to data providers and investors).

format and that this format be as usable for investors and other data users as possible. We understand, based on commenter input, that many investors obtain risk/return summary information through data aggregators but that they may seek it out more quickly than it is currently available in XBRL through fund submissions. To meet this demand for more timely data, one data aggregator manually extracts the risk/return summary information from fund HTML or ASCII filings over a period of days rather than wait up to 15 business days for the XBRL filings. We further understand, based on commenter input, that transitioning to Inline XBRL will allow risk/return summary information to reach investors via aggregators in hours, rather than days, after a Related Official Filing. As a result, we expect that more timely XBRL data will lead to increased use of that data by third-party data aggregators already in the market. We also anticipate that data aggregators with fewer resources or any new entrants to the data aggregation market would be better positioned to compete to provide information products to investors based on fund risk/return summaries if timely delivery does not require the resources necessary to tag the information manually. Investors will also be able to take further advantage of the XBRL data in ways that were not possible before. Because the Inline XBRL format embeds XBRL within the HTML document, investors can use their own web browser to view the embedded XBRL data and metadata within the context of the Related Official Filing, without having to download the information into any separate applications for review and analysis.

Contrary to some commenters' statements that this data is little used, risk/return summary XBRL data is accessed on EDGAR on a regular basis.[113] We also disagree with commenters who suggested that investors do not benefit when data aggregators use XBRL data.[114] These aggregators typically use this data to provide information to investors, and funds are primarily held by retail investors, who often look to third party information sites when evaluating various funds for investment.

Preparing Inline XBRL filings involves embedding XBRL tags into the HTML document. This single-document approach should create long-term benefits by removing a separate workflow of checking the numbers and text in the original HTML filing for consistency with the numbers and text in the separate XBRL filing and the related time demands that entails—time demands that currently contribute towards much later filings by funds and less timely information for fund investors.

Several commenters indicated that funds would not realize cost savings from Inline XBRL and that funds would incur significant costs of transition to Inline XBRL, which would be compounded by the elimination of the 15 business day filing period and would outweigh any benefits.[115] One commenter stated that its members do not anticipate a significant increase in the efficiency and effectiveness of their filing processes from the shift to Inline XBRL.[116] Two commenters stated that a number of funds currently use a standalone approach to XBRL preparation and thus may require significant changes in XBRL preparation workflow to transition to Inline XBRL.[117] One of these commenters further indicated that the Commission may have overestimated the proportion of funds that use an integrated approach to XBRL preparation.[118] According to this commenter, while funds that use ''the largest financial printers'' are likely well positioned to comply with the Inline XBRL requirement, funds that instead rely on other service providers for preparing and submitting XBRL filings (*e.g.,* law firms, administrators, in-house advisory firm personnel, and smaller financial printers) will be forced to incur significant costs and potentially change vendors.[119] Thus, the commenter asserted, the Inline XBRL Proposing Release significantly underestimated the costs of transitioning to Inline XBRL for funds, particularly for smaller filers.

We recognize that many funds today prepare and file an HTML or ASCII version of risk/return information in the Related Official Filing and then, up to 15 business days later, prepare and file a separate XBRL exhibit with this same risk/return information. As a result, many funds may incur one-time costs to change their workflow processes as they transition to filing this information in an Inline XBRL format without this extended filing period. We acknowledge that this may cause some funds to change vendors or software products used to create these filings, and that these transition costs will likely be greater than estimated in the Proposing Release.[120] However, we believe that the improved data usability that Inline XBRL offers, particularly when combined with the more efficient Inline XBRL process that reduces the need for the extended filing period, provides benefits to investors that justify these initial costs to funds.

Accordingly, we are adopting Inline XBRL and the related elimination of the 15 business day filing period for fund risk/return summaries. However, in light of the comments and to help funds address transition issues, we are extending the proposed phase-in for risk/return summary Inline XBRL requirements, as discussed in greater detail in Section III.A.1.c below. After careful consideration, we continue to believe that the amendments to risk/return summary XBRL requirements to reflect the evolution of XBRL technology will offer benefits to data users and further believe that the modified compliance dates provide sufficient time for filers, software vendors, and filing agents to transition to Inline XBRL.

b. Timing of Submission of Interactive Data File

The Commission did not propose any changes to the timing of the required submission of the financial statement information XBRL data, nor are we adopting any, and operating companies will generally continue to be required to submit the Interactive Data File with the filing.

With respect to risk/return summary information, currently an Interactive Data File for a Form N–1A filing, whether the filing is an initial registration statement or a post-effective amendment to it, must be submitted as an amendment to the registration statement to which the Interactive Data File relates.[121] That amendment with the Interactive Data File also must be submitted after the registration statement or post-effective amendment that contains the related information becomes effective but not later than 15 business days after the effective date of

[113] *See* Section II.B.3 above.

[114] *See, e.g.,* letters from Federated II, Frei, ICI II, and USBFS.

[115] *See* letters from Federated I and II, Frei, ICI I and II, and USBFS.

[116] *See* letter from ICI I.

[117] *See* letters from USBFS and XBRL US. Another commenter referenced the comment letter by USBFS (stating that ''at least one large filing vendor believes that the SEC's proposal may have significantly underestimated the cost of implementing iXBRL tagging in the mutual fund context, particularly for smaller registrants''). *See* letter from ICI II.

[118] *See* letter from USBFS.

[119] *Id.* We note, however, to the extent funds rely on other service providers to prepare and submit XBRL filings, those service providers in turn may be relying on financial printers.

[120] *See* letters from Federated I and II, ICI I and II, and USBFS.

[121] General Instruction C.3.(g)(i) to Form N–1A.

that registration statement or post-effective amendment.[122]

Funds also are required to submit an Interactive Data File for any form of prospectus filed that includes risk/return summary information that varies from the registration statement.[123] In the case of those filings, however, funds are permitted to file the Interactive Data File concurrently with the filing or up to 15 business days subsequent to the filing.[124] As the Commission noted in the 2009 Risk/Return Summary Adopting Release, the period of 15 business days was intended both to provide funds with adequate time to prepare the exhibit and to make the interactive data available promptly.[125]

i. Concurrent Submissions With Certain Post-Effective Amendment Filings

To help facilitate efficiencies in the fund post-effective amendment filing process, the Commission proposed to permit funds to submit Interactive Data Files concurrently with certain post-effective amendments to fund registration statements.[126] The Commission proposed this change in recognition of the fact that, in its experience, post-effective amendments filed pursuant to these paragraphs of Rule 485 generally are not subject to further revision.[127]

We received one comment letter on this aspect of the proposal. The commenter expressed support for the proposed amendment, believing that administrative costs would be reduced relative to making a separate filing for submitting the XBRL data.[128] After considering commenter input, and to provide funds with flexibility to achieve cost and administrative efficiencies, we are adopting the amendments as proposed.[129]

ii. 15 Business Day Filing Period

To improve the timeliness of the availability of risk/return summary XBRL information, the Commission proposed to eliminate the 15 business day filing period for the submission of the Interactive Data File accorded to all fund filings containing risk/return summaries (initial registration statements; post-effective amendments; and forms of prospectuses that include risk/return summary information that varies from the registration statement). At the same time, the Commission sought comment on whether a different length filing period might be more appropriate. In proposing to mandate the use of Inline XBRL, the Commission noted that Inline XBRL involves embedding XBRL data directly into the filing. Inline XBRL thereby reduces the need for this filing delay, which is typically used to prepare and review a separate XBRL-only filing.

Two commenters supported the Commission's proposal to eliminate the 15 business day filing period.[130] These commenters noted that the elimination of the 15 business day filing period would allow data aggregators to process and share the information more quickly with investors, who are the end-users. This is because aggregators would no longer have to either wait 15 business days or manually extract information from the HTML or ASCII version of the risk/return summary in order to provide the information to investors in a more timely manner, which itself takes time.[131] One commenter, while supporting elimination of the current filing period, noted that funds are ''accustomed to taking advantage of the 15-day grace period'' and so would need to enact major workflow changes if this period is eliminated, likely requiring increased staffing levels and resulting in higher costs for both funds and their vendors.[132] This commenter also acknowledged that funds may encounter greater challenges than operating companies under the proposed amendments, given that many fund complexes must make multiple, simultaneous filings for the funds they sponsor or manage.[133] This commenter asked the Commission to consider giving funds more time to make the transition to Inline XBRL due to these challenges, but nevertheless urged the Commission to adopt the proposal, believing that moving the marketplace to a single standard—Inline XBRL—would be ''beneficial to all stakeholders over the long-term.'' [134]

Three commenters expressed concerns about the costs, changes in workflow, and loss of flexibility associated with the elimination of the 15 business day filing period.[135] Two commenters proposed that the Commission preserve the 15 business day filing period to allow funds time to work through any technical difficulties that may occur with the tagging process and review and approve the tagged filings.[136] These commenters also stated that, for those funds that mail the prospectus and shareholder report together, the shorter timeframe for Inline XBRL review would increase the likelihood of having to mail the prospectus and shareholder report separately, which if it occurred, would increase the mailing costs for fund shareholders.[137]

One commenter did not support eliminating the current XBRL filing period, but stated that funds would not be burdened by shortening this period from 15 business days to 10 business days.[138] Another commenter suggested, as an alternative, shortening the 15 day timeframe to 7 days.[139]

After evaluating comments received on this issue, and in light of our decision to require the use of Inline XBRL for fund filers as proposed, we are eliminating the current 15 business day filing period for risk/return summary XBRL data. As a result:

- For post-effective amendments filed pursuant to paragraph (b)(1)(i), (ii), (v), or (vii) of Rule 485, Interactive Data

[122] *Id.*

[123] *See* General Instruction C.3.(g)(ii) to Form N–1A.

[124] *Id.*

[125] *See* 2009 Risk/Return Summary Adopting Release, at 7754, n. 97 and accompanying and following text.

[126] *See* proposed General Instruction C.3.(g)(i)(B) to Form N–1A.

[127] With the exception of post-effective amendments filed pursuant to Rule 485(b)(1)(iii), a post-effective amendment filed under Rule 485(b)(1) may become effective immediately upon filing.

Paragraph (b)(1)(i) of Rule 485 permits a post-effective amendment filing for the purpose of bringing the financial statements up to date under Section 10(a)(3) of the Securities Act or Rule 3–12 or 3–18 of Regulation S–X. 17 CFR 210.3–12 and 210.3–18.

Paragraph (b)(1)(ii) of Rule 485 permits a post-effective amendment filing for the purpose of complying with an undertaking to file an amendment containing financial statements, which may be unaudited, within four to six months after the effective date of the registrant's registration statement under the Securities Act.

Paragraph (b)(1)(v) of Rule 485 permits a post-effective amendment filing for the purpose of making any non-material changes which the registrant deems appropriate.

Paragraph (b)(1)(vii) of Rule 485 permits a post-effective amendment filing for any other purpose which the Commission shall approve.

[128] *See* letter from Federated I (stating that it is ''generally in support of allowing mutual funds to submit the interactive data files concurrently with certain post-effective amendments as we believe this would reduce administrative costs associated with filing interactive data separately'').

[129] *See* new General Instruction C.3.(g) to Form N–1A; *see also* new Rule 405(a)(3)(ii) of Regulation S–T. The amendments to these two provisions have the result of permitting fund filers to submit XBRL data concurrently with the Related Official Filing.

[130] *See* letters from Morningstar and XBRL US.

[131] *Id.*

[132] *See* letter from XBRL US.

[133] *Id. See* also letters from Federated II (stating that it submitted 1,291 filings, in addition to 336 XBRL filings, in the past calendar year for its funds) and ICI II (referencing the letter from Federated II).

[134] *See* letter from XBRL US.

[135] *See* letters from Federated I and II, ICI I and II, and USBFS.

[136] *See* letters from ICI I and II and Federated I and II.

[137] *Id.* One of these commenters estimated the additional mailing costs of sending the prospectuses separately at approximately $1.5 million per year. *See* letter from Federated II.

[138] *See* letter from USBFS.

[139] *See* letter from ICI II.

Files must be filed either concurrently with the filing or in a subsequent amendment that is filed on or before the date that the post-effective amendment that contains the related information becomes effective; [140]

- For initial registration statements and post-effective amendments filed other than pursuant to paragraph (b)(1)(i), (ii), (v), or (vii) of Rule 485, Interactive Data Files must be filed in a subsequent amendment on or before the date the registration statement or post-effective amendment that contains the related information becomes effective; [141] and
- For any form of prospectus filed pursuant to Rule 497(c) or (e), funds must submit the Interactive Data File concurrently with the filing.[142]

We recognize that many funds will experience changes in workflow and associated costs once the filing period is eliminated. However, we believe that eliminating the 15 business day filing period will significantly improve the timely availability of risk/return summary XBRL information for investors, other market participants, and other data users, yielding substantial benefits. Two commenters indicated that the benefits of XBRL data are currently not being realized for many potential data users, including data aggregators and (indirectly) investors, due to the filing period.[143] For data aggregators responding to demand for the data earlier than 15 business days after the effective date of the related filing, eliminating this period will remove the need for time consuming manual extraction of this information from HTML or ASCII filings and allow data aggregators to obtain this data earlier, thereby expediting the availability of the data and related analysis to investors.[144] Further, the transition of funds to Inline XBRL will entail embedding XBRL tags into the HTML filing, reducing the need for a separate XBRL filing period.

In addition, eliminating the current 15 day filing period could have other, indirect beneficial effects. We understand some funds currently provide more timely return information to some data aggregators. However, funds do not provide other information contained in the risk/return summary information on a more timely basis, such as fee and risk information, which data aggregators also use to provide information products to investors. Providing more timely XBRL data may enable data aggregators to better compete in providing timely information to investors. Today, only those aggregators with sufficient resources to manually extract this information from the text filings can respond to demands to provide investors with more timely data. Further, in the staff's experience, risk/return summary information is relatively standardized and the list of XBRL data elements that are tagged in the risk/return summary should not vary substantially from period to period, minimizing the impact of workflow changes in this area. Therefore, we do not see a compelling reason to retain even a shortened filing period, such as 10 or 7 days, and note that any delayed filing period would undermine the timeliness and usability benefits.

We also note that, while funds may currently use the 15 business day filing period to review the XBRL data, operating companies prepare, review, and file XBRL data without an additional filing period. Compared to fund filings with risk/return summaries, operating company XBRL filings entail a more complex taxonomy, with more data elements, as well as more instances of numeric data being embedded into text. Studies have shown that concurrent submission of the HTML and XBRL data for operating companies began with a standalone approach and over time transitioned to an integrated approach as technology developed to achieve efficiencies.[145] For example, one recent study found that the median small filer paid $10,000 or less for fully outsourced XBRL preparation.[146] Similarly, preliminary statistics from a pricing survey being conducted by the AICPA and XBRL US indicate that the cost of XBRL formatting has declined 41% since 2014 and that the average cost of XBRL preparation for small reporting companies in 2017 averaged $5,850 per year.[147] The experience of operating companies leads us to believe that, while many funds may not currently use an integrated approach to XBRL preparation and filing, with the concurrent HTML and XBRL filing, funds will likely transition to an integrated approach to achieve efficiencies. We would expect, after the initial transition, the costs to funds of preparing and reviewing XBRL submissions using an integrated approach similarly to go down over time, as they have for operating companies.

We anticipate that the technology and related workflow changes that accompany the transition to Inline XBRL will partly mitigate the concern about certain fund groups having to mail prospectuses separately if the 15 business day filing period is eliminated, because XBRL tags will be embedded in the HTML filing. In addition, based on staff analysis of fund filing data on EDGAR, most fund groups currently mail prospectuses and shareholder reports separately. Finally, recently adopted 17 CFR 270.30e–3 (''Rule 30e–3'' under the Investment Company Act) will provide certain registered investment companies with an optional method to satisfy their obligations to transmit shareholder reports by making such reports and other materials accessible at a website address and mailing investors a short paper notice indicating how to access the reports.[148] This change may reduce the mailing costs associated with shareholder reports, thereby potentially mitigating some of these concerns.

The amendments eliminating the 15 business day filing period do not change the liability provisions related to the Interactive Data File. One commenter recommended a temporary modification to the liability provisions pertaining to the Interactive Data File for risk/return summary filings following the elimination of the 15 business day filing period, similar to the temporary modified liability provision that was put in place when the XBRL requirements were adopted in 2009.[149] Given that we have delayed compliance with the Inline XBRL requirement and the elimination of the 15 business day period until two years after the effective date for funds that, together with other investment companies in the same

[140] *See* new General Instruction C.3.(g)(i)(B) to Form N–1A.

[141] *See* new General Instruction C.3.(g)(i)(A) to Form N–1A.

[142] *See* new General Instruction C.3.(g)(ii) to Form N–1A.

[143] *See* letters from Morningstar and XBRL US.

[144] *Id.*

[145] *See* Trevor S. Harris and Suzanne Morsfield, ''An Evaluation of the Current State and Future of XBRL and Interactive Data for Investors and Analysts''—''White Paper Number Three,'' Columbia Business School Center for Excellence in Accounting and Security Analysis (December 2012), *https://www8.gsb.columbia.edu/rtfiles/ceasa/An%20Evaluation%20of%20the%20Current%20State%20and%20Future%20of%20XBRL%20and%20Interactive%20Data%20for%20Investors%20and%20Analysts.pdf* (retrieved Jun. 20, 2018), at 38 (stating that filers have transitioned over time to integrated disclosure management solutions). Consistent with this observation, approximately 71% of operating company filers relied on integrated solutions in the 2013 FERF survey, compared to approximately 54% of operating company filers in the 2012 FERF survey. *See* FERF Study, at 6; William Sinnett, SEC reporting and the impact of XBRL: 2012 survey, Financial Executives Research Foundation (Nov. 15, 2013), at 25–26.

[146] *See* AICPA Study.

[147] *See* note 57 above.

[148] See Release No. IC–33115 (June 5, 2018) 83 FR 29158.

[149] *See* letter from Federated II.

''group of related investment companies,'' [150] have net assets of $1 billion or more as of the end of their most recent fiscal year (''large fund groups'') and three years after the effective date for small fund groups, as discussed in greater detail in Section III.A.1.c below, we do not believe that such a temporary liability modification is necessary.

c. Phase-In of the Inline XBRL Requirements

We are adopting phased compliance dates substantially as proposed, with modifications to further mitigate the potential burden of the initial transition on filers and preparers:

Operating companies	Compliance date [151]
Large accelerated filers that prepare their financial statements in accordance with U.S. GAAP.	Fiscal periods ending on or after June 15, 2019.
Accelerated filers that prepare their financial statements in accordance with U.S. GAAP.	Fiscal periods ending on or after June 15, 2020.
All other filers	Fiscal periods ending on or after June 15, 2021.

Funds	Compliance date
	Any initial registration statement (or post-effective amendment that is an annual update to an effective registration statement) that becomes effective on or after:
Large fund groups	September 17, 2020 (two years after the effective date of the amendments)
Small fund groups	September 17, 2021 (three years after the effective date of the amendments)

Except as noted below, based on the information on vendor readiness provided by commenters and the staff's observations of developments in the XBRL preparation industry and experience with voluntary Inline XBRL filings pursuant to the Exemptive Order, we are adopting a three-year phase-in for operating companies, as proposed: (i) Large accelerated filers that prepare their financial statements in accordance with U.S. GAAP will be required to comply with Inline XBRL for financial statements for fiscal periods ending on or after June 15, 2019; (ii) accelerated filers that prepare their financial statements in accordance with U.S. GAAP will be required to comply with Inline XBRL for financial statements for fiscal periods ending on or after June 15, 2020; and (iii) all other operating company filers that are subject to financial statement information XBRL requirements, including foreign private issuers (''FPIs'') [152] that prepare their financial statements in accordance with IFRS, will be required to comply with Inline XBRL for financial statements for fiscal periods ending on or after June 15, 2021.[153]

In a modification from the proposal, in response to comments,[154] domestic form filers [155] will be required to comply beginning with their first Form 10–Q for a fiscal period ending on or after the applicable compliance date, as opposed to the first filing for a fiscal period ending on or after that date, to enable filers to gain experience with Inline XBRL through less complex filings.[156] This approach is similar to the approach in the 2009 Financial Statement Information Adopting Release, which was intended to facilitate the transition of filers to financial statement information XBRL requirements.

Most commenters that addressed the proposed phase-in for operating companies supported it.[157] Some commenters supported the general phase-in approach but recommended postponing the compliance dates until after the third quarter of 2018 or creating a fourth early phase-in category for the largest 500 filers.[158] One of these commenters supported the phase-in for smaller filers because of potential cost increases during the transition period and specifically suggested that emerging growth companies (''EGCs'') [159] be added to the third phase-in category.[160] Several commenters proposed adjusting the compliance dates for the Inline XBRL requirement so that they initially apply to quarterly reports on Form 10–Q rather than Form 10–K, due to the lower complexity of Form 10–Q.[161]

Some commenters expressed a concern about the initial transition of operating companies to Inline XBRL because not all software vendors and filing agents are currently Inline-capable.[162] One of those commenters stated that the relative burden of initial transition for filers would depend on vendor readiness and that compliance

[150] For these purposes, the definition of a ''group of related investment companies'' is the same as the term defined in Rule 0–10 under the Investment Company Act [17 CFR 270.0–10]. Rule 0–10(a)(1) defines the term as applied to management investment companies as two or more management companies (including series thereof) that (i) hold themselves out to investors as related companies for purposes of investment and investor services; and (ii) either (A) have a common investment adviser or have investment advisers that are affiliated persons of each other, or (B) have a common administrator. We believe that this broad definition would encompass most types of fund complexes and therefore is an appropriate definition for compliance date purposes.

[151] Form 10–Q filers will not become subject to the Inline XBRL requirements with respect to Form 10–K or any other form, however, until after they have been required to comply with the Inline XBRL requirements for their first Form 10–Q for a fiscal period ending on or after the applicable compliance date for the respective category of filers.

[152] *See* Rule 405 under the Securities Act [17 CFR 230.405] and Rule 3b–4(c) under the Exchange Act [17 CFR 240.3b–4(c)].

[153] *See* new Rule 405(f)(1)(i).

[154] *See* note 161 below.

[155] Form 20–F and 40–F filers do not have quarterly report filing obligations and are therefore not affected by this provision.

[156] As an example, a Form 10–Q filer in the first phase-in group with a calendar fiscal year end will be required to begin compliance with the Inline XBRL requirement with its Form 10–Q for the period ending June 30, 2019. As a further example, a Form 10–Q filer in the first phase-in group with a June 30 fiscal year end will be required to begin compliance with the requirement with its Form 10–Q for the period ending September 30, 2019.

[157] *See, e.g.,* letters from AICPA, Kumar, Merrill, and XBRL US (also citing a survey of filers among which 71% supported a phase-in and 13% did not, while 52% thought that one year was the right amount of time before the first phase of filers is required to comply).

[158] *See, e.g.,* letters from EY and FEI.

[159] *See* Rule 405 under the Securities Act and Rule 12b–2 of the Exchange Act [17 CFR 240.12b–2].

[160] *See* letter from BIO.

[161] *See, e.g.,* letters from AICPA, EY, and Kumar.

dates should reflect this.[163] However, two commenters opposed a phase-in, stating that the costs of Inline XBRL transition would be minimal and that the phase-in would lower the benefits to data users.[164] One of those commenters suggested that compliance should begin with quarterly filings ending on or after June 15, 2019.[165] In addition, a number of commenters stated that the Inline XBRL transition would involve either no burden or only a small burden for filers and preparers because many vendors already include the Inline XBRL capability as part of their software package or could easily incorporate it as they have for their foreign customers that are required to use Inline XBRL for other reporting purposes.[166] Several commenters also stated that the Inline XBRL transition would have little impact on data users' existing processes for analyzing XBRL data and that many of them already use Inline XBRL data from foreign jurisdictions.[167]

After considering commenter input, we are not introducing additional phase-in categories, postponing the compliance date for EGCs, or making further modifications to the phase-in for operating companies. We do not believe that the potential incremental benefits to some filers from such changes would offset the increased complexity and delays of the benefits of Inline XBRL for market participants and other data users. EGCs will be required to comply beginning with fiscal periods ending on or after June 15, 2020, or June 15, 2021, depending on filer status and basis of accounting. Because the relative burden for filers of the fixed costs of initial transition to Inline XBRL, if any, is likely to depend on filer size, we believe that this approach provides smaller EGC filers, and other smaller filers, with sufficient time to transition to Inline XBRL.

With respect to funds, the Commission proposed a two-year phase-in based on net asset size. Specifically, for large fund groups, it proposed a compliance date of one year after the effective date to comply with the new requirements. For small fund groups, the Commission proposed a compliance date of two years after the effective date, to provide these filers with an additional year to comply with the new requirements.

Several commenters expressed concerns about the workflow and vendor changes that may be required for funds to transition to Inline XBRL and adjust to the elimination of the 15 business day filing period.[168] In particular, one commenter stated that ''to the extent the Commission determines to proceed in adopting the Proposed Rule, we encourage the Commission to provide mutual funds and their filing agents a minimum of two years to plan for and implement the changes needed to comply with the Proposed Rule.'' [169] Another commenter stated that one year would not be ''a realistic timeframe for implementation of the proposed amendments'' and suggested 18 months ''as a more achievable compliance date.'' [170] Another commenter supported the Inline XBRL requirement for funds and the elimination of their 15 business day filing period but suggested that ''the Commission may want to consider giving mutual funds more time to make the transition than operating companies'' given the likely workflow changes in instituting these amendments.[171]

After considering commenters' concerns, and consistent with their suggestions, to provide funds and vendors with additional time to implement any necessary workflow changes, we are extending the phase-in with respect to the Inline XBRL and timing requirements for risk/return summary XBRL data and modifying the compliance dates to two years after the effective date of the amendments for large fund groups and three years after the effective date of the amendments for small fund groups.[172]

We believe that these compliance dates will provide sufficient time for filers, filing agents, and software vendors to transition to Inline XBRL and adjust to the elimination of the extended filing period. Given that any fixed cost of initial transition may have a relatively greater impact on smaller filers, this approach will give such filers time to develop related expertise, as well as the opportunity to benefit from the experience of larger filers with Inline XBRL. The phase-in is also expected to provide filing agents and software vendors with additional time to transition to Inline XBRL and develop related expertise.

Similar to the proposal and consistent with a commenter's suggestion,[173] the amendments will permit all filers to file using Inline XBRL prior to the compliance date for each category of filers. Filers will be able to file in Inline XBRL under the amendments once the EDGAR system has been modified to accept submissions in Inline XBRL for all forms subject to the amendments, which is anticipated to be March 2019.[174] Notice of EDGAR system readiness to accept filings in Inline XBRL will be provided in a manner similar to notices of taxonomy updates and EDGAR Filer Manual updates. We believe that offering filers the option to file using Inline XBRL before the compliance date will enable filers that are ready to transition to Inline XBRL to begin realizing the benefits of Inline XBRL sooner. It will also enable vendors and filing agents used by early Inline XBRL adopters to gain valuable expertise that may help facilitate the transition to Inline XBRL for filers that transition to Inline XBRL at a later time. Otherwise, prior to the applicable compliance date, filers that do not file using Inline XBRL will continue to be required to submit the entire Interactive Data File as an exhibit, as they do currently.[175]

d. Scope of the Inline XBRL Requirements

The Inline XBRL requirements for financial statement information will apply to all operating company filers, including smaller reporting companies (''SRCs''),[176] EGCs, and FPIs that are currently required to submit financial statement information in XBRL. Several commenters supported our proposal not to exempt individual categories of operating company filers subject to XBRL requirements from the Inline XBRL requirement, citing data quality

[162] *See, e.g.,* letters from Cigna and FEI.

[163] *See* letter from FEI.

[164] *See* letters from Workiva I and CFA Institute.

[165] *See* letter from Workiva I.

[166] *See, e.g.,* letters from ACI; IRIS; Workiva I; Merrill; XBRL US (''At the latest, all XBRL US vendor members will be ready to file using inline XBRL by the second quarter of 2019.'').

[167] *See, e.g.,* letters from Morningstar; Octachoron; TagniFi; XBRL US (''We held informal discussions with several of these organizations ranging from startup companies . . . to large established organizations . . . These organizations, which today use XBRL-formatted US corporate data, indicated that extracting data from Inline XBRL is the same as extracting data from conventional XBRL files. Several indicated that they have already begun to use Inline XBRL given its availability in other non-US markets. Of these, the cost to do so was minimal, requiring zero to little change to their current process.'').

[168] *See* notes 115–119 above and accompanying text.

[169] *See* letter from USBFS.

[170] *See* letters from Federated I and II.

[171] *See* letter from XBRL US.

[173] *See* letter from Workiva II.

[174] Operating companies may continue to voluntarily file certain Exchange Act reports in Inline XBRL prior to that time pursuant to the Exemptive Order, which will cease to be operative once voluntary reporting under the amendments is permitted. *See* note 48 above and accompanying text.

[175] *See* new Rule 405(f)(2) and (3).

[176] *See* Rule 405 under the Securities Act, Rule 12b–2 under the Exchange Act and Item 10(f) of Regulation S–K [17 CFR 229.10(f)].

and efficiency reasons.[177] One commenter did not specifically address an exemption from the Inline XBRL format requirement but recommended exempting EGCs, SRCs, and nonaccelerated filers from XBRL requirements generally, citing concerns about cost and lack of use of XBRL data.[178]

We do not expect Inline XBRL to significantly affect the overall costs of compliance with XBRL requirements. While filers may incur a small initial transition cost, they also may realize reductions in ongoing costs of compliance with XBRL requirements.[179] Furthermore, filers may realize reductions in ongoing costs due to the elimination of the website posting requirement. We have sought to alleviate the initial transition burden for filers through phased compliance dates. Given the benefits expected from the Inline XBRL requirement, the overall readiness of the Inline XBRL technology, and the input from commenters regarding vendor readiness, we are not exempting any filers that are subject to existing XBRL requirements. Exempting some categories of filers subject to XBRL requirements from Inline XBRL could reduce the aggregate data quality and usability benefits for investors, analysts, and other users and create a need for investors and other data users to maintain indefinitely the support for both sets of technologies, potentially resulting in ongoing inefficiencies.

Some commenters addressed the scope of information subject to XBRL requirements more generally, although no such changes were contemplated as part of the Inline XBRL Proposing Release.[180] Several commenters expressed overall support for XBRL requirements in general [181] or suggested expanding the scope of operating company information that is required to be tagged,[182] or is permitted to be tagged,[183] in XBRL, while other commenters recommended exemptions from XBRL requirements for certain operating companies [184] or funds,[185] citing concerns about cost.

Two commenters recommended that, to the extent that the Commission wishes to modernize structured disclosure requirements for fund filers, it should rescind the existing XBRL requirements for risk/return summary information and replace them with requirements to tag certain risk/return summary information in the XML format on Form N–CEN.[186] Another commenter recommended that risk/return summary XBRL requirements apply only to forms of prospectuses that have been used to sell shares of the fund.[187]

As the Commission stated in the Inline XBRL Proposing Release, these amendments are aimed at modernizing existing XBRL requirements to incorporate developments in the XBRL technology since the 2009 adoption of these requirements.[188] Therefore, at this time, we are not changing the categories of operating company or fund filers, or the scope of operating company or fund disclosures, that are subject to these XBRL requirements.

2. Elimination of the Website Posting Requirements

We are adopting, as proposed, the elimination of the XBRL website posting requirements for financial statement information and risk/return summaries.[189]

In the 2009 Financial Statement Information Adopting Release and the 2009 Risk/Return Summary Adopting Release, the Commission stated that it thought that the website availability of the interactive data would encourage its widespread dissemination, make it easier and faster for investors to collect information on a particular filer, enable search engines and other data aggregators to more quickly and cheaply aggregate the data and make them available to investors, and potentially increase the reliability of data availability to the public.[190] However, the Commission also noted that this benefit could be limited since investors seeking to aggregate machine-readable XBRL data across companies, manually or through an automated process, may find XBRL exhibits posted on individual filers' websites less useful.[191]

We believe, based on our experience, that users of XBRL data generally do not seek the information directly from individual filers' websites; rather, they obtain the data from a more central repository of the data, such as the Commission's EDGAR system or third-party aggregators. We believe that access to XBRL data for purposes of aggregation and processing, whether by data aggregators or individual data users, is most efficiently achieved when such machine-readable data is consistently organized (*e.g.,* with respect to directory structure) and made available at a single source. Based on our experience since the Commission adopted the website posting requirements in 2009, we believe that potential data users can obtain sufficiently reliable access to XBRL data through EDGAR and do not need the backup of a website posting on a filer's website to access the XBRL data. Thus, data users should not incur significant costs from the elimination of the requirement to post the XBRL data on filers' websites. Operating companies and funds are expected to recognize a modest benefit from the elimination of this requirement.[192]

All of the commenters that addressed this aspect of the proposal supported eliminating the website posting requirements, citing the lack of utility to data users and/or the potential cost

[177] *See, e.g.,* letters from CFA Institute, Merrill, Morningstar, and XBRL US.

[178] *See* letter from BIO. *But see* AICPA Study (discussing XBRL preparation costs for smaller filers) and note 67 above (discussing XBRL data use for smaller filers and biotechnology companies).

[179] *See* Sections III.B.1.a and V.C below.

[180] *See* Inline XBRL Proposing Release, at 14291.

[181] *See, e.g.,* letters from CFA Institute, Grant Thornton, Members of Congress, Morningstar, TagniFi, XBRL International, and XBRL US.

[182] *See, e.g.,* letters from CFA Institute, Data Coalition, Merrill, XBRL International, and XBRL US.

[183] *See* letter from Gartner.

[184] *See* note 178 above.

[185] *See* letters from Federated I and II (recommending that we exempt funds from XBRL or replace XBRL with XML on Form N–CEN); ICI I and II (recommending that we exempt funds from XBRL); USBFS (recommending that we require funds to submit XBRL data only for forms of their prospectus that have been used to sell shares of the fund).

[186] *See* letters from Federated (stating that filing tagged data on Form N–CEN would create consistency in data tagging language and allow the Commission and third-party information providers to access important data about a fund in one location) and ICI. *See also* Release No. IC–32314 (Oct. 13, 2016) [81 FR 81870]. We note that, while funds are currently required to update their registration statements and file new XBRL data every time risk/return summary information changes, there is no requirement to update Form N–CEN (filed annually) for intra-year changes to its information. Therefore, filing risk/return summary tagged data on Form N–CEN could result in investors receiving risk/return summary information in a less timely manner.

[187] *See* letter from USBFS.

[188] *See* Inline XBRL Proposing Release, at 14291.

[189] Website posting is currently required by Rule 405(g) and General Instruction C.3.(g) to Form N–1A.

[190] *See* 2009 Financial Statement Information Adopting Release, at 6791–6792. Similarly, in adopting the website posting requirement for risk/return summary XBRL information, the Commission stated that website availability of the interactive data will encourage its widespread dissemination, contributing to lower access costs for users. *See* 2009 Risk/Return Summary Adopting Release at 7755–7756.

[191] *See* 2009 Financial Statement Information Adopting Release, at 6807. *See also* 2009 Risk/Return Summary Adopting Release, at 7767, n. 263 (''We believe the benefits will stem primarily from the requirement to submit interactive data to the Commission and the Commission's disseminating that data.'').

[192] *See* Sections III.B.2 and V.C below.

savings to filers.[193] One commenter that is a filer of risk/return summary information noted that an average of only three users per month access XBRL risk/return summary information through that filer's website.[194]

After considering the input from commenters, we agree that data users will not benefit from continued application of the website posting requirements, in light of the greater efficiency of retrieving XBRL data from EDGAR or other sources for purposes of aggregation and analysis. We continue to believe that most filers will realize a small benefit from the elimination of the website posting requirements, although the magnitude of the benefit for the average filer is likely to be small.

3. Termination of the 2005 XBRL Voluntary Program

We are adopting, as proposed, the termination of the 2005 XBRL Voluntary Program for financial statement information interactive data.[195] Subsequent to the adoption of the interactive data requirements for financial statement information for operating companies in 2009, the only filers that remain eligible for the program are registered investment companies, BDCs, and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S–X. No commenters objected to the termination of the program and given its very infrequent use, we do not believe that its continued existence will provide significant benefits.

4. Technical Amendments

We are adopting, as proposed, certain technical, conforming changes to the rules for hardship exemptions, current public information under Rule 144(c)(1) under the Securities Act, and form eligibility, consistent with the changes in format to the Interactive Data File and elimination of the website posting requirements. In addition, in Regulation S–T, we are deleting the definition of ''promptly'' from Rule 11 because it was used only in 17 CFR 232.406T (''Rule 406T''), which has expired, and deleting references to Forms S–2 and F–2 because those forms have been eliminated.

Although not proposed, we are adopting additional technical, conforming changes consistent with the elimination of the 2005 XBRL Voluntary Program and additional technical clarifying changes. In connection with the elimination of the 2005 XBRL Voluntary Program, these changes affect Item 601(b)(100) of Regulation S–K; a heading within and Rules 11, 305(b), and 402 of Regulation S–T; Rules 13a–14(f) and 15d–14(f) under the Exchange Act; paragraph 100 of the Instructions as to Exhibits of Form 20–F; paragraph C.(5) of the General Instructions to Form 6–K; Rules 8b–1, 8b–2, 8b–33, and 30a–2(d) under the Investment Company Act; and General Instruction B.4.(b) of Form N–1A under the Investment Company Act.

We are substituting the term ''filing'' for ''form'' in the definition of Interactive Data File in Rule 11 of Regulation S–T and in some instances within Rule 405 of Regulation S–T because the term ''filing'' better describes the range of documents subject to XBRL requirements. Also, we are altering proposed Rules 201(c)(1) and 202(c)(2) under Regulation S–T to specify that when a hardship exemption is received the document required to set forth a related legend must appear where the Interactive Data File exhibit otherwise would have appeared.

Further, we are amending Rule 201 under Regulation S–T to adopt a temporary hardship exemption for the inability to timely file Interactive Data Files for risk/return summary information.[196] Since 2009, while operating companies could avail themselves of both the temporary hardship exemption under Rule 201 and continuing hardship exemption under Rule 202, funds were limited to continuing hardship exemptions. The 2009 Risk/Return Summary Adopting Release explained that while the Commission was adopting a continuing hardship exemption with respect to risk/return summary information data, the Commission was not adopting a temporary hardship exemption because the final rules included a 15 business day filing period for submitting the Interactive Data File.[197] Because we are eliminating the 15 business day filing period, we are amending Rule 201 to similarly allow funds to avail themselves of the temporary hardship exemption.

Additionally, we are adopting technical changes to Rule 485 under the Securities Act to account for the elimination of the website posting requirements. We are also adopting technical changes to paragraphs (c) and (e) of Rule 497 under the Securities Act to indicate that a fund that files pursuant to Rule 497 must, if applicable pursuant to General Instruction C.3.(g) of Form N–1A, ''submit'' an Interactive Data File.[198]

B. Potential Economic Effects of the Amendments

We are mindful of the costs imposed by and the benefits obtained from our rules. Securities Act Section 2(b),[199] Exchange Act Section 3(f),[200] and Investment Company Act Section 2(c)[201] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Additionally, Exchange Act Section 23(a)(2) requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule will have on competition and not to adopt any rule that will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.[202]

The amendments aim to increase the efficiency and lower the cost of compliance with the existing XBRL requirements through process improvements associated with the Inline XBRL technology and the elimination of the website posting requirements. The discussion below addresses the potential economic effects of the amendments, including their likely costs and benefits, as well as the likely effects of the amendments on efficiency, competition, and capital formation, relative to the economic baseline, which is comprised of XBRL practices in existence today.[203]

At the outset, we note that, where possible, we have attempted to quantify the costs and benefits expected to result from the amendments to the XBRL requirements.[204] However, in some cases we have been unable to quantify the economic effects. For example, it is difficult to quantify the extent to which Inline XBRL will enhance the quality

[193] *See, e.g.,* letters from CFA Institute; Federated I and II; ICI I; Merrill; USBFS (supporting elimination but noting that it will not generate cost savings and may entail a small cost to modify the website to remove XBRL links and pages); and Workiva I.

[194] *See* letter from Federated II.

[195] We are amending Regulation S–T to remove Rule 401 that specifies voluntary program requirements and making related technical and conforming changes.

[196] *See* Note to Paragraph (c) of Rule 201.

[197] *See* 2009 Risk/Return Summary Adopting Release, at 7757, n. 129.

[198] This change in terminology makes Rule 497 consistent with Rule 485 under the Securities Act.

[199] 15 U.S.C. 77b(b).

[200] 15 U.S.C. 78c(f).

[201] 15 U.S.C. 80a–2(c).

[202] 15 U.S.C. 78w(a)(2).

[203] *See* Section II.B above.

[204] One comment letter requested that the Commission quantify the benefits of the proposal. *See* letter from Federated II.

and usability of XBRL data and, if so, how it will affect XBRL data use. We have been able to gain some insight into the potential economic effects of the amendments based on the experience of filers that have used Inline XBRL on a voluntary basis pursuant to the Exemptive Order; however, these insights are necessarily limited by the relatively small and self-selected nature of this subset of filers.

We assess the potential impact of the amendments relative to the economic baseline, which includes existing XBRL requirements, information about filers subject to these requirements, and current practices related to XBRL filing and use, described in Section II above.

1. Inline XBRL Requirements

a. Use of Inline XBRL

i. Benefits

After considering the input from commenters, as well as the experience of operating companies that voluntarily filed in Inline XBRL,[205] we continue to believe that filing in Inline XBRL has the potential to benefit both filers and users of this information. In particular, we continue to believe that the use of Inline XBRL may reduce the time and effort associated with preparing XBRL filings; simplify the review process for filers; and improve the quality and usability of XBRL data and thus increase the use of XBRL data by investors, other market participants, and other data users.[206]

Embedding XBRL data in an HTML document rather than tagging a copy of the data to create a separate XBRL exhibit should increase the efficiency and effectiveness of the filing preparation process and, by saving time and effort spent on the filing process, over time, reduce the cost of compliance with existing XBRL requirements.[207] Inline XBRL eliminates the need to create a separate XBRL instance document containing all of the XBRL tags, which can reduce the incidence of those re-keying errors that are associated with producing separate documents for the same information. Inline XBRL also makes it possible for filers or filing agents to view XBRL metadata[208] within the HTML document, which can facilitate the review of XBRL data and better equip filers to detect XBRL errors. Further, filers or filing agents can use tools like the open source Inline XBRL Viewer to review the Interactive Data File and more efficiently filter and identify errors and locate information within the filing (*e.g.,* by using the topic query feature). Thus, by facilitating the preparation and review of XBRL data, Inline XBRL can decrease the overall time and cost required by filers to comply with the existing XBRL requirements.

Various commenters stated that they expect Inline XBRL to result in a lower cost and/or greater efficiency of XBRL preparation.[209] However, other commenters stated that Inline XBRL will not necessarily result in burden savings for filers.[210] As the Commission noted in the Inline XBRL Proposing Release, the benefit of savings in ongoing XBRL preparation and filing costs due to Inline XBRL will be smaller for filers that presently rely on the integrated XBRL preparation approach.[211] Nevertheless, such filers may realize small time savings and/or efficiencies in the filing process from Inline XBRL.[212] Additionally, because Inline XBRL gives the preparer full control over the presentation of filer disclosures, those filers that currently choose XBRL tags so that the data looks similar to the HTML document when rendered by software into a human-readable presentation will have less of an incentive to do so because Inline XBRL will embed XBRL tags into the HTML document.[213] It is challenging to quantify potential gains in the effectiveness and efficiency of the filing preparation process and the resulting reductions in the ongoing cost of compliance with the XBRL requirements due to data limitations and variation in filer circumstances. However, for purposes of the Paperwork Reduction Act of 1995 (''PRA''),[214] we continue to estimate that the average burden of XBRL preparation will decrease slightly after the initial transition to Inline XBRL and the average annual external cost of XBRL preparation will increase slightly.[215] We recognize that individual filers' costs and cost savings from Inline XBRL may vary for a number of reasons, including the filer's and the filing agent's experience with Inline XBRL.

The use of Inline XBRL may also improve XBRL data quality and thus potentially benefit data users. When XBRL is embedded directly into the HTML document, the filer prepares and reviews a single document, rather than separate documents—as is the case with the current reporting requirement—which should enable a reduction in data errors, particularly for those filers that currently use the standalone XBRL preparation approach.[216] Further, filers or filing agents can use review tools like the open source Inline XBRL Viewer to more readily filter and identify errors. To the extent that Inline XBRL technology can reduce the rate of XBRL errors that are not detected by filers with the current XBRL filing practices and technology, Inline XBRL could incrementally improve XBRL data quality, which could potentially benefit data users.[217] Additionally, since Inline XBRL filers will have less of an

[205] Funds are not eligible to voluntarily file in Inline XBRL pursuant to the Exemptive Order.

[206] *See* Inline XBRL Proposing Release, at 14293–4, nn. 154, 155, and 162. *See also* notes 86–88 above.

[207] *See* Inline XBRL Proposing Release, at 14293–4, nn. 155, 156. *See also* note 85 above.

[208] Such metadata include, for example, definitions, reporting period information, data type, and related references.

[209] *See* note 85 above.

[210] *See, e.g.,* letters from ICI I (regarding risk/return summaries) and Pergamit.

[211] *See* Inline XBRL Proposing Release, at 14294.

[212] Software vendors and filing agents that currently use the integrated XBRL preparation approach, combining the processes of creating interactive data tags and an HTML document, cannot presently take full advantage of the resulting efficiency because of current requirements. At present, filing agents and/or filers that use integrated XBRL solutions must expend the effort, albeit minimal, to split out the interactive data and save it to a separate instance document for filing.

[213] *See* also note 89 above and accompanying text.

[214] 44 U.S.C. 3501 *et seq.*

[215] *See* Section V.C.1 below. Compared to the existing XBRL requirements for operating companies, the annual internal burden per filer for Inline XBRL filers is expected to be approximately 1 hour lower in the first year (1 response × (8 − 2) hours + 3.5 responses × (− 2) hours) and 9 hours lower after the first year (4.5 responses × (− 2) hours); the annual external cost per filer for Inline XBRL filers is expected to be approximately $22.50 higher, beginning in the first year (4.5 responses × $5).

Compared to the existing XBRL requirements for funds, the annual internal burden per filer for Inline XBRL filers is expected to be approximately 3.32 hours higher in the first year (1 response × (4 − 0.5) hours + 0.36 responses × (− 0.5) hours) and 0.68 hours lower after the first year (1.36 responses × (− 0.5) hours); the annual external cost per filer for Inline XBRL filers is expected to be approximately $10 higher, beginning in the first year.

[216] *See* Inline XBRL Proposing Release, at 14288, n. 83 and at 14293–4, n. 155. Filers that do not currently use an integrated approach may achieve greater benefits in data quality and efficiency from the more integrated process that Inline XBRL offers. *See* notes 117–119 above (discussing the use of a standalone approach by fund filers).

[217] Existing format requirements for Interactive Data Files include the element accuracy requirement, which provides that each data element (*i.e.,* all text, line item names, monetary values, percentages, numbers, dates, and other labels) contained in the Interactive Data File must reflect the same information in the corresponding data in the Related Official Filing. *See* Rule 405(c)(1)(i) of Regulation S–T.

We also note that the incremental effects of Inline XBRL on the reduction in XBRL errors will be smaller if other ongoing initiatives continue to reduce XBRL data errors. For example, the XBRL US Data Quality Committee periodically publishes guidance and validation rules to help public companies detect inconsistencies or errors in their XBRL-formatted financial data, such as incorrect

Continued

incentive to create custom XBRL tags solely to mimic the appearance of an HTML filing, Inline XBRL could increase the ability of investors, other market participants, and other data users to compare information across filers for those filers that currently engage in such tagging practices.[218]

A number of commenters stated that Inline XBRL could result in an improvement in XBRL data quality and a potential decrease in XBRL errors.[219] However, several commenters stated that Inline XBRL by itself will not improve data quality since the change in the format does not affect the nature of tagging or the filer's ability to select inappropriate custom tags.[220] As the Commission stated in the Inline XBRL Proposing Release, because the amendments do not modify the scope and substance of existing XBRL requirements or the categories of filers subject to the requirements, the improvement in data quality and the overall economic benefits incremental to Inline XBRL likely will be smaller than the benefits of the XBRL requirements more generally.[221] The Commission also noted that Inline XBRL filers may continue to use custom tags to represent certain company-specific data after the switch to Inline XBRL.[222] Therefore, while Inline XBRL and tools such as the Inline XBRL Viewer facilitate review and detection of certain re-keying errors, they will not resolve all XBRL data quality issues. A review of a sample of voluntary Inline XBRL filings pursuant to the Exemptive Order suggests that some XBRL data quality issues may remain for a minority of filers. However, the experience of a relatively small number of voluntary filers may not be representative of all filers subject to the amendments, particularly given that the Exemptive Order only extended to operating companies and that most voluntary filers already use integrated software, thus their transition to Inline XBRL likely entailed minimal changes to XBRL preparation workflow and a resulting minor data quality impact.

Several commenters indicated that Inline XBRL would not result in significant improvements in risk/return summary XBRL data quality because there is little evidence of issues with the quality of risk/return summary XBRL data today.[223] We acknowledge that data quality benefits may be more modest for funds than for operating companies, in part due to greater standardization of risk/return summary XBRL data.[224] However, we understand that funds can also experience data quality issues in compiling separate XBRL risk/return summary files.[225]

Overall, we continue to believe that the benefits of potential reduction in certain errors from Inline XBRL, although incremental, may generally contribute to future improvements in XBRL data quality, especially when used in conjunction with tools such as the Inline XBRL Viewer.[226]

Inline XBRL could also enhance how users view XBRL data related to Commission disclosures. Several commenters stated that Inline XBRL will contribute to greater usability and transparency of XBRL data for investors and other data users.[227] With Inline XBRL, the EDGAR system enables users to view information about the reported XBRL data embedded in Inline XBRL filings on the Commission's website, using any recent standard Internet browser, without the need to access a separate document. With this feature, when a user views a filing submitted in Inline XBRL on EDGAR, the user will be able to see tags and the related metadata while viewing the HTML document. These Inline XBRL features can provide the benefit of greater context and information to investors. The software enabling this feature has been made freely available in an effort to facilitate the creation of cost-effective Inline XBRL viewers and analytical products.[228] Moreover, despite the limited number of Inline XBRL filings so far, we have observed enhancements that the public has made to the Inline XBRL Viewer to improve analysis of Inline XBRL data, which may improve the usability of the data.

With respect to funds, the benefit of increased usability of risk/return summary XBRL data is expected to be further enhanced when combined with the elimination of the 15 business day filing period for risk/return summary XBRL information, which will make XBRL data available to investors and other data users more quickly.

To the extent that the use of Inline XBRL results in an improvement in XBRL data quality and usability, and thus in increased use of XBRL data by investors, market participants, and other data users, we expect the benefits associated with XBRL in general to be enhanced. As the Commission stated in the 2009 Financial Statement Information Adopting Release and 2009 Risk/Return Summary Adopting Release, the availability of information in XBRL enables investors and other data users to capture and analyze that information more quickly and at a lower cost, as well as to search and analyze the information dynamically; facilitates comparison of information across filers and reporting periods; and leads to better-informed investment decisions and potential gains in the efficiency of capital formation and allocation, through a reduction in the information barriers faced by investors or costs of collecting and analyzing disclosures.[229] We lack the ability to quantify the incremental contribution of Inline XBRL to potential increases in the use of XBRL data and the broader economic benefits of XBRL. We anticipate that the effect will depend on several factors, including the extent of improvements in XBRL data quality and usability following the transition to Inline XBRL; changes in XBRL data use by investors, other market participants, and other data users; and technological innovation in XBRL preparation and analytics solutions.

ii. Costs

The Inline XBRL requirement may impose costs on filers, XBRL preparation software vendors, filing agents, and data users.

We expect that the initial transition to Inline XBRL could result in a cost to filers. Filers may switch to Inline XBRL either by using Inline XBRL enabled preparation software that they develop or license or by obtaining Inline XBRL preparation services from a third-party service provider (filing agent). Filers that rely on filing agents for XBRL preparation may incur an incremental cost of Inline XBRL upgrades (to the extent that the cost incurred by filing agents is passed on to filers). Filers that prepare XBRL filings in-house will need to replace or update their XBRL

negative values, improper relationships between elements, and incorrect dates associated with certain data. *See https://xbrl.us/data-quality/rules-guidance/* (retrieved Jun. 20, 2018).

[218] *See* notes 89 and 213 above and accompanying text.

[219] *See* note 86 above.

[220] *See, e.g.,* letters from EY, TagniFi, and Workiva I (regarding financial statement information).

[221] *See* Inline XBRL Proposing Release, at 14295.

[222] *Id.*

[223] *See* note 107 above.

[224] *See* also Inline XBRL Proposing Release, at 14287.

[225] *See* Inline XBRL Proposing Release, at 14294–14295. *See also* note 216 above and accompanying text.

[226] The Inline XBRL Viewer can enable a faster review and detection of certain data quality errors because of its data filter functions, such as sorting amounts entered as negative values in Inline XBRL filings.

[227] *See* notes 87–88 above.

[228] *See https://www.sec.gov/structureddata/edgarvalandrender* (retrieved Jun. 20, 2018).

[229] *See* 2009 Financial Statement Information Adopting Release, at 6777, 6807–6808; 2009 Risk/Return Summary Adopting Release, at 7766–7768.

preparation software with versions that include Inline XBRL capabilities. We expect such costs to be lower if there is more competition among filing agents and software vendors that offer Inline XBRL capabilities. Filers also may incur an internal cost to train their personnel to use Inline XBRL and to comply with the Inline XBRL requirements.

Filers that use software that is already enabled for Inline XBRL or that can readily be modified to accommodate the Inline XBRL format, as well as filers that use filing agents that use such software, are expected to incur a minimal transition cost. In particular, for filers and filing agents that rely on integrated XBRL filing solutions, filing in Inline XBRL could require only a very minor adjustment to the filing process, similar to choosing the format in which the file will be saved out of several available formats. Conversely, filers and filing agents using a standalone approach will require greater changes to their workflow. Several commenters expressed concerns about a lack of software vendor readiness and a greater than anticipated burden of initial transition.[230]

Some operating company filers have demonstrated the Inline XBRL capability through electing to voluntarily file in Inline XBRL pursuant to the Exemptive Order.[231] In addition, a number of XBRL software vendors and filing agents involved in XBRL preparation for a significant share of the U.S. XBRL market have developed or indicated plans to offer Inline XBRL capabilities.[232] One commenter stated that ''[m]any vendors today already have Inline XBRL capabilities or have development underway'' to incorporate this capability into their tools. [233] The commenter also stated that, at the latest, all of its vendor members will be ready to file using Inline XBRL by the second quarter of 2019, which is compatible with the compliance date for the first operating company phase-in category.[234] Another commenter stated that ''[m]ost providers either have Inline XBRL capabilities or will have it soon'' and that ''[t]he cost of switching to providing Inline XBRL is not significant enough to cause a competitive change in the marketplace.'' [235] Several XBRL vendors indicated in their comment letters that they have Inline XBRL capabilities.[236]

Further, the experience of operating company filers electing to make voluntary Inline XBRL submissions pursuant to the Exemptive Order suggests that filers have not incurred a significant change in external preparation costs. However, this inference is based on a relatively small number of operating company filers, most of which already use integrated XBRL software. Thus their change in costs may not be representative of the overall population of filers subject to the amendments.

Although we recognize the likelihood of relatively greater initial costs being incurred by filers that do not use such software or such filing agents, we believe that, as a general matter, the overall cost of initial transition to Inline XBRL technology will be relatively small. In particular, we expect this to be the case because the amendments do not modify the substance of the XBRL requirements and thus do not affect the process of selecting tags from the taxonomy for the required disclosures (the disclosure mapping process that precedes the creation of the XBRL submission accounts for the overwhelming majority of the XBRL preparation time and cost). The creation of the Inline XBRL document will occur after the mapping of company disclosures to the taxonomy is completed and will consist largely of a software function, which could include a broad range of file formats (*e.g.,* HTML, PDF, XBRL, and Inline XBRL).

Inline XBRL cannot be used with the ASCII format. Thus, filers that prepare the Related Official Filing in the ASCII format will incur additional costs of switching to HTML, and any fixed costs of such a change will have a relatively greater effect on smaller entities.[237] We continue to believe that such costs will be minimal. First, relatively few filers presently use the ASCII format and therefore only those few filers will need to incur the cost of switching to HTML as a result of the amendments. On March 1, 2017, the Commission adopted amendments to require the use of the HTML format for registration statements and periodic and current reports that are subject to the exhibit requirements under Item 601 of Regulation S–K and for Forms F–10 and 20–F.[238] As of September 1, 2018, all registrants will be required to comply with those amendments.[239] While those amendments excluded some operating company filings that will be subject to Inline XBRL requirements, in particular, Form 6–K and Form 40–F filings, in practice almost no such filings are presently filed in the ASCII format.[240] Similarly, a relatively small proportion of fund filings is filed in the ASCII format.[241] Second, the average costs of switching from ASCII to HTML will be small because the software tools to prepare and file documents in HTML are widely used and the incremental cost of HTML features is minimal.[242] Additionally, the phase-in of the Inline XBRL requirements is expected to partly mitigate the impact on smaller ASCII filers by giving them more time to adjust.

While we expect that filers will continue to incur ongoing costs of compliance with the XBRL requirements,[243] we do not expect those ongoing costs to increase appreciably due to Inline XBRL. For most filers, we anticipate that the transition to Inline XBRL will, over time, somewhat reduce the ongoing costs of compliance with the XBRL requirements, as discussed in greater detail in Section V.C below. For purposes of the PRA, we continue to estimate that the average filer will incur a one-time increase in in-house personnel time to transition to Inline XBRL and a slight increase in the annual external cost of XBRL preparation. After the initial transition to Inline XBRL, we estimate that the average filer will experience a small decrease in the in-house personnel time required to comply with XBRL

[230] *See* notes 101, 115, 117–118, and 162 above.

[231] *See* Section II.B.2 above. Funds are not eligible to voluntarily file in Inline XBRL under the Exemptive Order.

[232] *See* note 62 above.

[233] *See* letter from XBRL US.

[234] *Id.*

[235] *See* letter from Merrill.

[236] *See, e.g.,* letters from ACI, IRIS, and Workiva I.

[237] *See* Inline XBRL Proposing Release, at 14288–14289.

[238] *See* Release No. 33–10322 (Mar. 1, 2017) [82 FR 14130].

On October 11, 2017, the Commission proposed amendments that would similarly require funds to file in HTML format registration statements and reports that include exhibits. *See* Release No. 33–10425 (Oct. 11, 2017) [82 FR 50988] (''FAST Act Proposing Release'').

[239] The requirements were effective September 1, 2017, although smaller reporting companies and nonaccelerated filers need not comply until September 1, 2018.

[240] We have identified approximately 0.1% of filings in ASCII format among Forms 6–K filed in 2017. We have not identified filings in ASCII format among Forms 40–F filed in 2017.

[241] In 2016, approximately 2.6% of Form N–1A filings, 4.9% of amendments filed under Rule 485(a), 14.1% of amendments filed under Rule 485(b), and 5.5% of filings under Rule 497 were in the ASCII format, as shown by staff analysis of EDGAR filings.

On October 11, 2017, the Commission proposed amendments that would similarly require funds to file in HTML format registration statements and reports that include exhibits. *See* FAST Act Proposing Release.

[242] *See* Inline XBRL Proposing Release, at 14289.

[243] *See* 2009 Financial Statement Information Adopting Release, at 6800–6802, 6804–6806.

requirements.[244] While the incremental initial and ongoing costs of Inline XBRL are not expected to be significant for the average filer, such costs for individual filers may vary due to filer circumstances, including their familiarity with Inline XBRL and the XBRL preparation solution used by the filer or its filing agent.

Further, the European Securities and Markets Authority has recently adopted a requirement for issuers that are listed on European Union (EU) regulated markets and that prepare their annual financial reports in accordance with IFRS to use the Inline XBRL format beginning on January 1, 2020.[245] Under the amendments, FPIs that prepare their financial statements in accordance with IFRS as issued by the IASB will be required to comply with the Inline XBRL requirements for financial statements for periods ending on or after June 15, 2021. Thus, the incremental burden of transition to Inline XBRL under the amendments for FPIs filing IFRS financial reports with the EU market regulators is expected to be minimal.

We note that some filers may incur an increased burden if their filings contain a major technical error in the XBRL data. In particular, currently, when there is a major technical error in the XBRL data submitted in an exhibit, the EDGAR validation system causes the exhibit to be removed from the submission, but the submission as a whole is not suspended.[246] With the Inline XBRL format, the EDGAR validation system will typically suspend a filing that contains any major technical error in the Interactive Data File, which will require the filing to be revised before it can be accepted by EDGAR.[247] Based on staff observations, very few XBRL exhibits are removed by the EDGAR system due to such major technical errors, in part, because filers and filing agents routinely use tools, including ones that the Commission makes available, to help identify and correct technical errors prior to EDGAR filing.[248] Because similar validation tools will be available to Inline XBRL filers, we believe that such suspensions should be rare for Inline XBRL filers.

The Commission did not propose and is not making changes with respect to application of officer certifications or auditor assurance requirements to XBRL data.[249] In response to commenters' suggestions, we are reiterating that the change from the XBRL format to the Inline XBRL format does not affect our existing positions with respect to those requirements. Therefore, we do not anticipate changes in audit fees or other filer costs relative to the baseline stemming from officer certifications or auditor assurance. One commenter stated that the use of Inline XBRL might result in an increase in the rate of voluntary use of auditor assurance.[250] While we acknowledge this possibility, we lack the information necessary to quantify the magnitude of such a potential effect.

Changes to the XBRL format may affect XBRL preparation software vendors and filing agents, and some of the transition costs incurred by software vendors and filing agents from Inline XBRL may be passed on to filers. Various commenters stated that the effect of the amendments on software vendors and filing agents will be small,[251] while some commenters expressed concern about vendor readiness.[252] As the Commission stated in the Inline XBRL Proposing Release, we recognize that XBRL preparation software vendors and filing agents that do not already use Inline XBRL would have to expend resources to transition to Inline XBRL, including upgrading or replacing software and training staff. Initially, software vendors and filing agents that cannot readily implement Inline XBRL, particularly smaller vendors, will be at a competitive disadvantage. Transition costs could be partly mitigated by the availability of the royalty-free Inline XBRL specification and transformation registry, which defines how the values of facts that appear in HTML documents are converted to the required data types for XBRL.[253] Transition costs may also be lower for software vendors or filing agents that have experience with Inline XBRL in other jurisdictions.[254]

The phase-in incorporated in the amendments is expected to give software vendors and filing agents time to develop and update software in ways that minimize transition costs. It is also possible that the ongoing costs of Inline XBRL preparation solutions will go down over time, including for filers in later phase-in categories, as Inline XBRL solutions become more widespread in the XBRL preparation industry.

Data users may incur a cost to modify their XBRL extraction software or algorithms to accommodate Inline XBRL (*e.g.,* to download files from a different URL, to use different filenames, or to parse XBRL information from a different file format). Although we do not have sufficient information to quantify the costs to data users of a change from the XBRL format to the Inline XBRL format, we believe that such costs are likely to be minimal because the amendments do not affect the taxonomy or the scope of the information required to be tagged. Additionally, we have made freely available to the public the software enabling users to view information about the reported XBRL data contained in embedded tags and to extract XBRL data, in an effort to facilitate the creation of cost-effective Inline XBRL viewers and analytical products.[255] For most data users that previously processed either XBRL instance documents or HTML documents, the slight increase in processing times due to the potentially larger size of the Inline XBRL document is unlikely to be a significant limitation in light of the advanced state of existing computing technology and internet connectivity

[244] *See* Section V.C below.

[245] *See https://www.esma.europa.eu/policy-activities/corporate-disclosure/european-single-electronic-format* (retrieved Jun. 20, 2018).

[246] During filing and validation, the EDGAR Renderer creates error and warning messages when issues with the XBRL data are identified. Certain errors will result in the XBRL exhibits being ''stripped'' from a filing, although the rest of the filing is accepted in EDGAR.

[247] In some cases, a major technical error in the Interactive Data File would instead cause the XBRL content to be removed from the submission, but in that case the submission as a whole would not be suspended.

[248] To assist with XBRL filing, the Commission has made available for download certain tools, such as the Previewer and Interactive Data Test Suite, that filers can use with their own systems to test XBRL submissions prior to EDGAR filing. *See https://www.sec.gov/structureddata/edgarvalandrender* and *https://www.sec.gov/structureddata/interactive-data-test-suite* (retrieved Jun. 20, 2018).

[249] *See* note 98 above.

[250] *See* AICPA (stating that ''going forward, to provide investors additional confidence in the iXBRL formatted information, audit committees are likely to request that auditors perform a separate attestation engagement to provide an opinion on the accuracy and consistency of the XBRL formatted information, and issue a report . . .''). *See also* note 100 above and accompanying text.

[251] *See* notes 231–236 above and accompanying text.

[252] *See* note 230 above.

[253] *See* note 78 above.

[254] For example, Inline XBRL is used in the UK (*https://www.gov.uk/government/publications/xbrl-tagging-when-what-and-how-to-tag*); Australia (*https://asic.gov.au/about-asic/media-centre/find-a-media-release/2015-releases/15–104mr-asic-introduces-format-for-improved-communication-of-financial-information/*); Ireland (*https://www.revenue.ie/en/companies-and-charities/submitting-financial-statements/who-must-submit-financial-statements-in-ixbrl.aspx*); South Africa (*https://www.xbrl.org/news/progress-in-the-cipc-implementation-of-xbrl/*); Denmark and Japan (*https://www.xbrl.org/the-standard/why/who-else-uses-xbrl/*) (retrieved Jun. 20, 2018). Specific disclosure requirements differ from those in the United States. *See also* note 245 above.

[255] *See https://www.sec.gov/structureddata/edgarval9landrender* (retrieved Jun. 20, 2018) and *http://arelle.org/download/* (retrieved Jun. 20, 2018).

speeds. Several commenters stated that they either already have the capability to use Inline XBRL data or that XBRL data users will incur minimal costs to transition from XBRL to Inline XBRL.[256]

b. Timing of Submission of Interactive Data File

The Commission did not propose, and is not adopting, changes to the timing of the required submission of the financial statement information XBRL data. Thus, no economic effects are expected relative to the baseline.

The Commission proposed to permit funds to submit Interactive Data Files concurrently with certain post-effective amendments to registration statements under Rule 485(b), which was supported by one commenter,[257] with no commenters opposing the proposed change. As proposed, we are permitting filers to file risk/return summary information Interactive Data File concurrently with certain post-effective amendments under Rule 485(b). We continue to believe, as the Commission stated in the Inline XBRL Proposing Release, that this change may help facilitate efficiencies in the post-effective amendment filing process and result in small savings in compliance costs for some fund filers, and no commenters disagreed with our analysis.

We are eliminating the current 15 business day filing period for the submission of risk/return summary XBRL data, as proposed. We continue to believe that eliminating the 15 business day filing period will significantly benefit investors, other market participants, and other data users by ensuring timely availability of risk/return summary XBRL information. The more timely availability of risk/return summary XBRL information is expected to reduce the time that investors, other market participants, and other data users require to extract risk/return summary information from filings and to facilitate aggregation, analysis, and comparisons of risk/return summary information across funds. Eliminating this period will remove the need for manual extraction of this information from HTML or ASCII files and make important fund fee, return, and risk information contained in the risk/return summary freely available to investors more quickly than it is today. As indicated by commenters that supported the proposed change, XBRL data users currently face a delay in the availability of risk/return summary XBRL data relative to risk/return summary information filed in HTML, which for some users has rendered the XBRL data less useful.[258]

To the extent that having risk/return summary information available in the XBRL format in a timely manner enhances the ability of investors, either directly or through third parties such as data aggregators, to perform aggregation, analysis, and comparison of information about funds, the amendments may facilitate better informed investment decisions, increase competition among funds for investor capital, and improve the efficiency of capital allocation. To the extent that more timely information on fund fees, returns, and risks becomes available to investors through these tools, fund complexes may benefit as well if greater investor awareness of risk/return information helps funds attract investors. We understand many fund complexes urge these third parties to provide fund information and analysis to investors as quickly as possible (and well in advance of 15 business days) for these reasons. We acknowledge that these benefits will be limited, to the extent that investors currently can efficiently obtain timely information about fund performance and risks from other sources, such as the Related Official Filing, fund websites, or third parties. Two commenters stated that tagged risk/return summary information would not be valuable because the information is historical and is not as timely as the performance information investors may obtain from other sources.[259] However, to the extent that risk/return summary information in a registration statement is generally valuable to investors, timely availability of the same information in XBRL format should enhance its value by enabling more efficient aggregation, analysis, and comparison of that information across funds and time periods.

As the Commission stated in the Inline XBRL Proposing Release, we recognize that eliminating the 15-day period will reduce the flexibility with respect to the timing of preparing and reviewing XBRL data that is presently afforded to fund filers.[260] We also recognize that most fund filers currently rely on this flexibility to submit XBRL data after the post-effective amendment or form of prospectus to which it relates and that its elimination could increase XBRL compliance costs for fund filers and their filing agents (that may pass these costs on to filers) as they adjust their workflows. Consistent with this analysis, several commenters noted that funds currently rely on the flexibility afforded by the XBRL filing period to prepare and review XBRL data and resolve any technical issues with XBRL tagging and that the removal of the filing period would cause funds to incur costs to change current workflows.[261] However, the Inline XBRL format required under the amendments involves embedding tags into the filing itself, which reduces the relevance of preserving the 15 business day filing period.

Based on input from commenters,[262] we also understand that certain funds currently file the Related Official Filing for forms of prospectuses early in order to be able to combine the mailing of annual reports and prospectuses. If these funds wish to continue combining these mailings, the elimination of the 15 business day XBRL filing period may require changes to XBRL preparation workflow to ensure that risk/return summary XBRL data is prepared for filing earlier than it is currently prepared, potentially leading to additional costs. Alternatively, funds that do not implement these workflow changes will incur additional mailing costs if they file forms of prospectuses with XBRL data at a later date and, as a result, mail them separately from the annual reports.[263] Workflow changes to prepare risk/return summary XBRL data at the same time as the Related Official Filing of the form of prospectus will be most pronounced for funds that

[256] *See, e.g.,* letters from XBRL US (stating that it ''held informal discussions with several of these organizations ranging from startup companies . . . to large established organizations . . .'' and that ''[t]hese organizations, which today use XBRL-formatted US corporate data, indicated that extracting data from Inline XBRL is the same as extracting data from conventional XBRL files. Several indicated that they have already begun to use Inline XBRL given its availability in other non-US markets. Of these, the cost to do so was minimal, requiring zero to little change to their current process.''); TagniFi (stating that it has used XBRL to collect and standardize financial statement data for more than 6,000 companies representing over 99% of the U.S. market capitalization, using approximately 140,000 XBRL filings since 2009 and further stating that it has used Inline XBRL financial data since June 2016); Octachoron (stating that ''[t]he technologies we have developed to build and manipulate individual company information, compare filings across time and across sectors, and compile market-wide statistical analysis, would in principle be unaffected by a change to Inline XBRL filing.''); and Morningstar (stating that ''[i]n our experience, it will be a relatively seamless transition from XBRL to Inline XBRL because the technology is sufficiently developed.'').

[257] *See* note 128 above.

[258] *See* notes 130 and 143 above and accompanying and following text.

[259] *See* letters from Federated II and ICI II.

[260] *See* Inline XBRL Proposing Release, at 14297.

[261] *See* letters from Federated I and II; ICI I and II; and USBFS.

[262] *See* note 137 above and accompanying text.

[263] *See* letters from ICI I and II and Federated I and II. One of these commenters estimated the additional mailing costs of sending the prospectuses separately at approximately $1.5 million per year. *See* letter from Federated II.

currently prepare XBRL data separately, after preparing the Related Official Filing.

The Commission stated in the Inline XBRL Proposing Release that timely availability of free risk/return summary information in XBRL might reduce demand for some subscription products and services of fund data aggregators, to the extent that their value added is reduced by the timely availability of free XBRL information. However, as users of the data, data aggregators are likely to benefit from greater timeliness of risk/return summary XBRL data.[264]

c. Phase-In of Inline XBRL Requirements

The amendments include a staggered phase-in of the Inline XBRL requirements for operating companies based on filer size and method of accounting, largely as proposed. In a change from the proposal, as suggested by several commenters,[265] the amendments permit operating company Form 10–Q filers in each phase-in category to begin compliance with the Inline XBRL requirement with their first Form 10–Q for a fiscal period ending on or after the applicable compliance date for the respective phase-in category. This modification is expected to enable Form 10–Q filers in each phase-in category to accumulate Inline XBRL expertise by starting with a less complex filing and thus potentially facilitate the initial transition to Inline XBRL.

The amendments also include a staggered phase-in of the Inline XBRL requirements for funds based on filer size. In a change from the proposal, based on input from commenters, the compliance dates have been extended by one year to give funds additional time to implement workflow changes necessary to transition to Inline XBRL and elimination of the 15 business day filing period. This modification is expected to facilitate transition, particularly for filers and filing agents that presently lack Inline XBRL capabilities.

The use of a phase-in defers the costs and benefits of Inline XBRL for some categories of filers. To the extent that the initial cost of transition to Inline XBRL has a fixed component that is independent of filer size, it will have a relatively greater effect on smaller filers. In light of this, under the phase-in schedule we are adopting, smaller filers will be given additional time to transition to Inline XBRL, which will defer the initial cost for small filers and partly mitigate the associated competitive effects. We further anticipate that late adopters will incur lower transition costs in absolute terms than early adopters. In particular, as time elapses after the initial group of filers adopts Inline XBRL, we expect filing agents and software vendors to accumulate Inline XBRL expertise and refine technological solutions offered to filers, which also may result in lower costs to filers. Furthermore, to the extent that the market for Inline XBRL preparation services and software becomes more competitive over time, the switching cost incurred by subsequent filers may be reduced.

Similar to the proposal, the amendments will permit filers to use Inline XBRL before required. A high rate of such early transition to Inline XBRL would accelerate the economic impact of Inline XBRL.

Until all filers adopt Inline XBRL, data users will have to maintain the capability to extract data in both the Inline XBRL format and the XBRL format, which may be incrementally costlier than using a single format (*e.g.,* if all filers were required to use Inline XBRL at the same time and if early switching to Inline XBRL were not allowed). Given the very limited scope of modifications to their XBRL data extraction algorithms that data users are likely to need to switch to Inline XBRL and the public availability of open source tools to facilitate Inline XBRL data use, we expect this potential cost to be minimal. Differences in the timeliness of the availability of risk/return summary XBRL information during the transition period may reduce the efficiency of the use of XBRL data for fund comparisons until the XBRL filing delay is eliminated for all filers.

2. Elimination of the Website Posting Requirements for Financial Statement Information and Risk/Return Summaries

The elimination of the website posting requirements is expected to yield cost savings for filers. For purposes of the PRA, we estimate that the elimination of the website posting requirements will result in an average reduction in the annual internal burden associated with XBRL requirements of approximately four hours per filer per year for operating companies and approximately one hour per filing for funds.[266] All of the commenters that addressed the proposed elimination of the website posting requirements supported it.[267]

The elimination of the website posting requirements could impose costs on some data users by reducing their access to XBRL data about individual filers. However, commenters indicated that investors and other users do not generally access XBRL data from operating company or fund websites.[268] Based on our experience and input from commenters, we continue to believe that data users can efficiently and reliably access XBRL filing data through EDGAR and the Commission's Really Simple Syndication (''RSS'') Feeds for purposes of data aggregation and processing and comparison of information across filers. Accordingly, we continue to believe that data users will incur minimal costs from the elimination of the website posting requirements.

3. Termination of the 2005 XBRL Voluntary Program

The termination of the 2005 XBRL Voluntary Program is expected to have negligible economic effects on filers, filing agents, and software vendors given continued absence of participants in the program in recent years. Similarly, the aggregate economic effects on data users of terminating the 2005 XBRL Voluntary Program will likely be negligible. We did not receive comments on this aspect of the proposal.

4. Alternatives

We considered several alternatives to the amendments concerning timing, scope, and optionality.

We could require Inline XBRL for all filers without a phase-in.[269] A faster transition to Inline XBRL on a large scale could accelerate the realization of efficiency and data usability and quality gains. However, compared to the amendments, this alternative would accelerate the initial compliance costs for smaller filers, potentially placing them at a disadvantage, as stated by various commenters that supported the

[264] *See, e.g.,* letters from Frei, Morningstar, and USBFS (referencing XBRL data use by data aggregators) and notes 130 and 143 above and accompanying and following text (discussing the benefits of greater timeliness to data aggregators).

[265] *See* note 161 above.

[266] *See* Section V.C.1 below.

[267] *See* note 193 above.

[268] *See, e.g.,* letters from Federated I (stating that ''very few fund shareholders currently access, or have historically accessed, XBRL risk/return summary information via the Funds' website''); USBFS (stating that it ''is not aware of any significant use by investors or analysts of XBRL data posted to mutual fund websites and believes that any firm seeking to aggregate XBRL data would only be able to do so efficiently from a centralized location, such as the Commission's EDGAR system.''); and Workiva I (stating that ''the need to separately post filings on corporate filer websites no longer exists. Investors may locate filings either by searching EDGAR or the Internet. This unnecessary requirement should be removed.'')

[269] *See* note 164 above (discussing two commenters that opposed a phase-in).

use of a phase-in to mitigate the initial transition burden on smaller filers, XBRL preparation software vendors, and filing agents.[270]

As another alternative, we could apply a different phase-in schedule. For example, one commenter recommended using a phase-in with four groups rather than three, starting with the 500 largest registrants, similar to the phase-in at the outset of the financial statement information XBRL requirements.[271] Another commenter recommended moving EGCs to the last year of the phase-in, regardless of accelerated filer status.[272] The tradeoff between the costs and benefits of an alternative phase-in schedule depends on the number of affected filers, the net effect of Inline XBRL on the cost of compliance with XBRL requirements and the usability and quality of XBRL data for different categories of affected filers, the timing of the phase-in, and the number of early adopters. With respect to a later phase-in for all EGCs, the relative burden for filers of the fixed costs of initial transition to Inline XBRL is likely to depend on filer size rather than EGC status. Smaller EGC filers, which would have a potentially greater relative burden of initial transition, will not be required to comply until the fourth year after the effective date of the final amendments. More generally, we do not believe that further changes to the phase-in would result in meaningful net benefits relative to the amendments. A greater number of phase-in categories may introduce additional complexity and postpone the realization of benefits by data users. Moreover, the benefit of adding other phase-in categories to filers, XBRL preparation software vendors, and filing agents may be relatively incremental in light of the other steps taken to alleviate the potential burden of transition for those filers that use software or filing agents that do not presently have Inline XBRL capabilities.

Inline XBRL requirements for financial statement information will apply to all operating company filers, including SRCs,[273] EGCs,[274] and FPIs,[275] that currently are required to submit financial statement information in XBRL. As an alternative, as the Commission discussed in the Inline XBRL Proposing Release, we could exempt one or more of these categories of filers from the Inline XBRL requirement or create a new category of exempt filers (based on size or other criteria). One commenter did not specifically address an exemption from the Inline XBRL requirement but recommended exempting EGCs, SRCs, and nonaccelerated filers from XBRL requirements altogether, citing concerns about cost.[276] Similarly, Inline XBRL requirements for risk/return summary information will apply to all funds that currently are required to submit risk/return summary information in XBRL. As an alternative, to address the concerns about the burden of initial transition to Inline XBRL for smaller filers,[277] we could exempt smaller funds from the Inline XBRL requirement. To the extent that some filers that are currently subject to XBRL requirements would not be required to adopt Inline XBRL under these alternatives, the alternatives would likely result in smaller economic costs and benefits compared to the amendments. To the extent that smaller filers that do not currently have the Inline XBRL capability are more likely to be affected by the initial cost of transition to Inline XBRL, these alternatives would mitigate the competitive disadvantage for smaller filers relative to larger filers. However, compared to the amendments, these alternatives would likely reduce the benefits to data users expected from Inline XBRL. Several commenters indicated that exempting certain XBRL filers from Inline XBRL would diminish the benefits to data users and reduce economies of scale with regard to tools for creation and extraction of XBRL data.[278] Further, to the extent that some filers would use XBRL while other filers would use Inline XBRL under this alternative, data users would have to maintain indefinitely the capabilities to extract both XBRL and Inline XBRL data, although the incremental cost of maintaining both sets of capabilities likely would be minimal.

As another alternative, we could exempt FPIs from the Inline XBRL requirement. Compared to the final amendments, such an alternative could place FPIs at a competitive advantage relative to domestic filers, particularly smaller domestic filers, to the extent that exempt filers would not incur the cost of switching to Inline XBRL. It also would deprive investors and other XBRL data users of the associated benefits of Inline XBRL.

Under the amendments, the use of Inline XBRL will be mandatory for operating companies and funds. As an alternative, we could allow but not require the use of Inline XBRL for financial statement information and/or for risk/return summaries. Compared to the amendments, a voluntary approach could have lower costs for those filers and filing agents that do not believe Inline XBRL to be cost-efficient and would not transition to Inline XBRL.[279] However, a voluntary approach would also reduce potential benefits to data users, including potential data quality improvements and the ability to view contextual information about XBRL disclosures, compared to mandatory Inline XBRL, to the extent that Inline XBRL use would be more widespread under a mandatory approach than a voluntary one. In this regard, even if Inline XBRL is ultimately more efficient and generates aggregate benefits for filers and data users, individual filers may fail to voluntarily transition to Inline XBRL, resulting in a lower rate of Inline XBRL use under a voluntary approach than under a mandatory approach. This may occur for several reasons. A lack of awareness of new technology and inertia are common hurdles to market-wide adoption in voluntary regimes. In addition, coordination problems, as well as the existence of network externalities related to the majority of filers utilizing a particular technology, may lower the rate of voluntary adoption. Because individual filers do not internalize the aggregate benefits of Inline XBRL to other filers and data users, from an individual filer's standpoint, it may be optimal to delay the one-time adjustment of workflow processes

[270] *See* notes 157–158 above. Separately, several commenters expressed concerns about the burden of initial transition. *See* note 230 above.

[271] *See* letter from EY.

[272] *See* letter from BIO.

[273] Based on staff analysis of EDGAR filings of Forms 10–K and 10–Q, we estimate that there were approximately 2,745 filers during calendar year 2017 that identified themselves as SRCs. Forms 20–F and 40–F do not contain a checkbox to indicate SRC status. Concurrent with this release, the Commission is adopting amendments to the SRC definition, which will expand the set of companies eligible for SRC status. *See* Release No. 33–10513 (Jun. 28, 2018).

[274] Based on Ives Group's AuditAnalytics data, as of December 2017, we estimate that there were approximately 1,941 filers of Form 10–K, 20–F, or 40–F during calendar year 2017 that had at some point identified themselves as EGCs.

[275] Based on staff analysis of EDGAR filings, we estimate that there were approximately 745 filers of Forms 20–F and 40–F during calendar year 2017. The estimate excludes foreign filers that filed only domestic forms.

[276] *See* letter from BIO.

[277] *See* letter from USBFS.

[278] *See* note 177 above.

[279] *See* note 230 above.

required to transition to Inline XBRL until other filers transition to Inline XBRL, in order to take advantage of potential future gains in Inline XBRL preparation experience and reductions in Inline XBRL preparation cost due to economies of scale. Because the industry is currently utilizing a non-Inline XBRL specification, until there is an impetus for coordinated transition, the rate of voluntary adoption of Inline XBRL may remain modest.[280] In addition, under a voluntary alternative, to the extent that some filers use the Inline XBRL format while others use the XBRL format, data users would have to maintain indefinitely the capabilities to extract both XBRL and Inline XBRL data, although we expect the incremental costs of maintaining both capabilities would be minimal.

The amendments eliminate the 15 business day filing period for fund risk/return summary XBRL information. As an alternative, we could modify rather than eliminate the 15 business day filing period. For example, one commenter suggested that shortening the filing period to 10 business days would not result in a significant burden to funds while another commenter suggested shortening the filing period to 7 days.[281] These alternatives present a tradeoff between the flexibility that the filing period provides and the timeliness of the availability of risk/return summary XBRL information to data users. Compared to the elimination of the XBRL filing period under the amendments, the alternatives of a 7- or 10-business day filing period would reduce the benefits to investors and other data users from receiving more timely information on fund expenses, risks, and returns in XBRL. Further, because Inline XBRL involves embedding tags into the HTML document, once a filer transitions to Inline XBRL, the relevance of preserving the separate XBRL filing period is reduced and the incremental benefits to the filer of an extended filing period are likely to be attenuated.

The amendments eliminating the 15 business day filing period for funds do not change the liability provisions related to the Interactive Data File. As an alternative, we could temporarily modify the liability provisions pertaining to risk/return summary information XBRL data following the elimination of the 15 business day filing period, as suggested by one commenter.[282] This alternative would temporarily reduce the costs to funds of liability for errors and omissions in risk/return summary information XBRL data, potentially decreasing the initial transition cost. However, given the extended period under the amendments for complying with the Inline XBRL requirement and the elimination of the 15 business day period, the benefit to funds from this alternative may be limited. Further, to the extent that this alternative could potentially weaken the incentives of filers to review XBRL data for accuracy during the temporary modified liability period, it could negatively impact data users.

IV. Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

V. Paperwork Reduction Act

A. Background

The amendments concern existing XBRL data rules that contain collection of information requirements within the meaning of the PRA. The Commission published a notice requesting comment on changes to these collection of information requirements in the Inline XBRL Proposing Release, and the Commission submitted these changes to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[283] The titles for the affected collections of information are:

''Interactive Data'' (OMB Control No. 3235–0645); and

''Mutual Fund Interactive Data'' (OMB Control No. 3235–0642).

These collections of information require operating company and fund filers to submit specified information to the Commission as an exhibit to their current and periodic reports and registration statements and post it on their websites, if any, in interactive data format. The information required is referred to as an Interactive Data File. The amendments will require operating company and fund filers, on a phased in basis, to embed part of the Interactive Data File within an HTML document using Inline XBRL and include the rest in an exhibit to that document. The amendments also will eliminate the current website posting requirements.

The primary purpose of the amendments is to improve the usefulness and quality of, and, over time, to decrease the cost of preparing for submission, certain information filers are required to submit to the Commission in interactive data form. Compliance with the amendments will be mandatory according to the phase-in schedule. Responses to the collections of information will not be kept confidential by the Commission and there is no mandatory retention period for the collections of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number.

B. Summary of Comment Letters and Revisions to Proposals

In the Inline XBRL Proposing Release, the Commission requested comment on our PRA burden hour and cost estimates and the analysis used to derive such estimates. We did not receive any comments that provided quantitative estimates concerning our PRA analysis and burden estimates of the amendments. However, several commenters that specifically addressed risk/return summary Inline XBRL requirements stated that the Commission may have underestimated the burden of initial transition to Inline XBRL.[284] Therefore, we are revising upward our estimate of the burden of initial transition to Inline XBRL for funds, as described in greater detail below. Further, in response to commenter concerns, we are modifying the compliance dates for funds and providing funds an additional year after the effective date of the amendments to comply with the Inline XBRL requirements. Therefore, we are revising the calculation of the average aggregate change in burden during the three-year period after the effective date of the amendments to reflect the modified phase-in. The other modifications to the proposal are not expected to affect burden estimates for the purposes of the PRA. We also are revising the estimate of the number of operating company and fund filers to reflect more recent information.

C. Reporting and Cost Burden Estimates

1. Registration Statement and Periodic Reporting

Form S–1 (OMB Control No. 3235–0065), Form S–3 (OMB Control No. 3235–0073), Form S–4 (OMB Control No. 3235–0324), and Form S–11 (OMB Control No. 3235–0067) prescribe information that a filer must disclose to register certain offers and sales of

[280] *See* note 59 above.

[281] *See* notes 138–139 above.

[282] *See* letter from Federated II.

[283] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[284] *See* letters from Federated I and II, ICI I and II, and USBFS.

securities under the Securities Act. Form F–1 (OMB Control No. 3235–0258), Form F–3 (OMB Control No. 3235–0256), Form F–4 (OMB Control No. 3235–0325), and Form F–10 (OMB Control No. 3235–0380) prescribe information that an FPI must disclose to register certain offers and sales of securities under the Securities Act. Form 10–K (OMB Control No. 3235–0063) prescribes information that a filer must disclose annually to the market about its business. Form 10–Q (OMB Control No. 3235–0070) prescribes information that a filer must disclose quarterly to the market about its business. Form 10 (OMB No. 3235–0064) prescribes information that a filer must disclose when registering a class of securities pursuant to the Exchange Act. Form 8–K (OMB No. 3235–0060) prescribes information an issuer must disclose to the market upon the occurrence of certain specified events and enables an issuer to disclose other information voluntarily. Form 20–F (OMB Control No. 3235–0288) and Form 40–F (OMB No. 3235–0381) are used by an FPI both to register a class of securities under the Exchange Act as well as to provide its annual report required under the Exchange Act. Form 6–K (OMB No. 3235–0116) prescribes information that an FPI must disclose regarding certain specified changes to its business and securities pursuant to the Exchange Act and enables an issuer to disclose other information voluntarily. The information required by the Interactive Data collection of information corresponds to specified financial information required by these forms.

Form N–1A (OMB Control No. 3235–0307) is used by funds to register under the Investment Company Act and to offer their securities under the Securities Act. The information required by the Mutual Fund Interactive Data collection of information corresponds to specified risk/return summary information now required by Form N–1A and is required to appear in exhibits to registration statements on Form N–1A and Rule 497 submissions and on fund websites. Although the Mutual Fund Interactive Data filing requirements are included in Form N–1A, the Commission has separately reflected the burden for these requirements in the burden estimate for Mutual Fund Interactive Data and not in the burden for Form N–1A.

We continue to estimate that the Inline XBRL requirement for financial statement information will result in an initial increase in the existing internal burden of XBRL requirements (56 hours per response) by eight hours to switch to Inline XBRL. This increase in burden will be borne only for the initial response that uses Inline XBRL. We also continue to estimate that reductions in review time will result in a decrease of two hours per response in the existing internal burden, beginning with the initial response and continuing on an ongoing basis.[285] We further estimate that the average filer will incur a small increase in external cost of $5 per response (from $6,170 to $6,175) on an ongoing basis, beginning in the first year of compliance for its phase-in category. In the Inline XBRL Proposing Release we estimated that there would be 38,705 responses per year by 8,601 filers.[286] Based on more recent information on the number of filers, we estimate that there will be 37,418 responses per year by 8,315 filers.[287] Based on the number of filers that we expect to be phased in during each of the first three years under the requirements,[288] the number of filings that we expect those filers to make that will require interactive data, and the internal burden hour and external cost estimates per response discussed above, we estimate that, over the first three years of the Inline XBRL requirements, switching to the Inline XBRL format will decrease the aggregate average yearly burden of financial statement information XBRL requirements by 20,455 hours of in-house personnel time[289] and increase the aggregate average yearly cost of services of outside professionals by $106,640.[290]

The elimination of the website posting requirement also is expected to reduce the paperwork burden of the financial statement information XBRL requirements. The Commission previously estimated that operating companies would incur an average of approximately four burden hours per filer per year to post interactive data to their websites. Based on the updated estimate of 8,315 filers, we estimate that the elimination of the website posting requirement will decrease the aggregate average yearly burden on operating company filers by 33,260 hours.[291]

The Commission previously estimated the aggregate average yearly burden of the existing XBRL requirements for operating companies as 2,167,480 hours of in-house personnel time[292] and $238,809,850 in the cost of services of outside professionals.[293] Using more recent information on the number of filers, the aggregate average yearly burden of the existing XBRL

[285] Thus, for the initial response using Inline XBRL, we estimate that filers will experience a net increase in internal burden of 6 hours (8 hours − 2 hours = 6 hours).

[286] *See* Inline XBRL Proposing Release, at 14301, n. 200. 8,601 filers × 4.5 responses per filer = 38,705 responses per year.

[287] *See* note 49 above. We continue to estimate that there will be 4.5 responses per filer per year. 8,315 filers × 4.5 responses per filer = 37,418 responses.

[288] Based on staff analysis of Form 10–K, 10–Q, 20–F, and 40–F filings and amendments to them filed during calendar year 2017, approximately 26% of filers were large accelerated filers and approximately 19% of filers were accelerated filers. For purposes of this estimate, we assume that these percentages are representative of the percentages of filers in different phase-in categories.

[289] The first response is estimated to incur a net additional burden of six hours per response and the remaining responses are estimated to incur a net decrease in burden of two hours per response. The calculation below considers the aggregate average yearly change in internal burden incurred by each of the three categories of filers during the first three years of the Inline XBRL requirements. Filers that are phased in during year two are assumed to incur no change in burden during year one. Filers that are phased in during year three are assumed to incur no change in burden during years one and two.

Filers phased in during year one: 8,315 × 26%. Average yearly change in internal burden per filer: [6 + (3.5 + 4.5 + 4.5) × (−2)]/3 = −6.33 hours. Aggregate average yearly change in internal burden for filers phased in during year one: 8,315 × 26% × (−6.33 hours) = −13,685 hours.

Filers phased in during year two: 8,315 × 19%. Average yearly change in internal burden per filer: [0 + 6 + (3.5 + 4.5) × (−2)]/3 = −3.33 hours. Aggregate average yearly change in internal burden for filers phased in during year two: 8,315 × 19% × (−3.33 hours) = −5,261 hours.

Filers phased in during year three: 8,315 × 55%. Average yearly change in internal burden per filer: [0 + 0 + 6 + 3.5 × (−2)]/3 = −0.33 hours. Aggregate average yearly change in internal burden for filers phased in during year three: 8,315 × 55% × (−0.33 hours) = −1,509 hours.

Aggregate average yearly change in internal burden: −13,685 − 5,261 − 1,509 = −20,455 hours.

[290] Filers are estimated to incur an additional $5 per response beginning with the first year of compliance for their phase-in category. The calculation below considers the aggregate average yearly change in external cost incurred by each of the three categories of filers during the first three years of the Inline XBRL requirements. Filers that are phased in during year two are assumed to incur no change in external cost during year one. Filers that are phased in during year three are assumed to incur no change in external cost during years one and two.

Filers phased in during year one: 8,315 × 26%. Average yearly change in external cost per filer: [$5 × 3 × 4.5]/3 = $22.50. Aggregate average yearly change in external cost for filers phased in during year one: 8,315 × 26% × $22.50 = $48,643.

Filers phased in during year two: 8,315 × 19%. Average yearly change in external cost per filer: [$0 + $5 × 2 × 4.5]/3 = $15.00. Aggregate average yearly change in external cost for filers phased in during year two: 8,315 × 19% × $15.00 = $23,698.

Filers phased in during year three: 8,315 × 55%. Average yearly change in external cost per filer: [$0 + $0 + $5 × 4.5]/3 = $7.50. Aggregate average yearly change in external cost for filers phased in during year three: 8,315 × 55% × $7.50 = $34,299.

Aggregate average yearly change in external cost: $48,643 + $23,698 + $34,299 = $106,640.

[291] 8,315 × (−4) = −33,260 hours.

[292] 8,601 × 4.5 = 38,705 responses. 38,705 responses × 56 hours per response = 2,167,480 hours.

[293] 8,601 × 4.5 = 38,705 responses. 38,705 responses × $6,170 per response = $238,809,850.

requirements for operating companies would be 2,095,408 hours of in-house personnel time [294] and $230,869,060 in the cost of services of outside professionals.[295] We estimate that in the first three years of the Inline XBRL requirements, the aggregate average yearly burden of XBRL requirements for operating companies will be 2,041,693 hours of in-house personnel time [296] and $230,975,700 in the cost of services of outside professionals,[297] which represents a decrease of 53,715 hours of in-house personnel time [298] and an increase of $106,640 in the cost of services of outside professionals,[299] or a decrease of 6.46 hours of in-house personnel time per filer [300] and an increase of $12.83 in the cost of services of outside professionals per filer.[301]

With respect to fund risk/return summaries, the Commission previously estimated that each fund will submit one Interactive Data File as an exhibit to a registration statement or a post-effective amendment thereto, and that 36% of funds will submit an additional Interactive Data File as an exhibit to a filing pursuant to Rule 485(b) or Rule 497. The Commission also previously estimated that (1) tagging and submitting fund risk/return data in XBRL format requires 11 hours per response, and (2) posting interactive data to the fund website requires one additional hour per response. In addition, the Commission previously estimated an external cost burden of $890 for the cost of goods and services purchased to comply with the current Interactive Data requirements, such as for software and/or the services of consultants and filing agents. The cost burden does not include the cost of the hour burden described above.

In the Inline XBRL Proposing Release, the Commission estimated that there would be 15,104 responses per year by 11,106 funds.[302] Based on updated industry figures on the number of funds, we estimate that there will be 15,206 responses per year by 11,181 funds.[303]

The Inline XBRL Proposing Release also estimated that the Inline XBRL requirement for risk/return summary information would result in an initial increase in internal burden by two hours to switch to Inline XBRL. Commenters did not provide quantitative estimates of the impact of Inline XBRL on the burden of XBRL preparation for risk/return summaries. However, after considering qualitative input from some commenters that indicated the Commission may have underestimated the cost of transition to Inline XBRL for funds,[304] we are revising the estimate of the increase in internal burden for funds from two hours to four hours for the initial response. We continue to estimate that this increase in burden will be borne only for the initial response that uses Inline XBRL. Further, we continue to estimate that there will be a reduction in review time that will result in a decrease in internal burden of approximately 0.5 hours per response, beginning with the initial response and continuing on an ongoing basis.[305] We are postponing the phase-in for funds by one additional year after the effective date of the amendments. Based on the estimate of 11,181 funds,[306] and accounting for the modifications to the phase-in of different filer categories, we estimate that the aggregate average yearly internal burden of risk/return summary information XBRL requirements will increase by 11,537 hours of in-house personnel time.[307] We also continue to estimate that the average fund will incur an increase in software costs of $10 per year on an ongoing basis, beginning in the first year of compliance for its phase-in category with the Inline XBRL requirement. Based on the estimate of 11,181 funds,[308] we estimate that the Inline XBRL requirement will result in an increase of $49,557 in the aggregate average yearly cost of services of outside professionals.[309]

The elimination of the website posting requirements is expected to reduce the paperwork burden for funds by one hour per response. We therefore estimate that the elimination of the website posting requirements will decrease the aggregate average yearly burden on funds by 15,206 hours of in-house personnel time or 1.36 hours per fund.[310]

The Commission previously estimated that the existing risk/return summary information XBRL requirements require funds to expend 181,248 hours of in-house personnel time and $9,884,340 in the cost of services of outside professionals per year, based on an

[294] 8,315 × 4.5 = 37,418 responses. 37,418 responses × 56 hours per response = 2,095,408 hours.

[295] 8,315 × 4.5 = 37,418 responses. 37,418 responses × $6,170 per response = $230,869,060.

[296] 2,095,408 − 53,715 = 2,041,693 hours. *See* note 294 above and note 298 below.

[297] $230,869,060 + $106,640 = $230,975,700. *See* notes 290 and 295 above.

[298] − 20,455 − 33,260 = − 53,715 hours. *See* notes 289 and 291 above.

[299] *See* note 290 above.

[300] − 53,715 hours/8,315 filers = − 6.46 hours per filer. *See* notes 49 and 298 above.

[301] $106,640/8,315 filers = $12.83 per filer. *See* notes 49 and 290 above.

[302] *See* Inline XBRL Proposing Release, at 14302, n. 217.

[303] *See* note 50 above. We continue to estimate that there will be 1.36 responses per fund per year. 11,181 funds × 1.36 responses = 15,206 responses.

One commenter estimated that it prepared approximately 336 XBRL filings during the past calendar year. *See* letter from Federated II. In its 2017 letter, the commenter stated that it had 123 mutual funds. *See* letter from Federated I. This results in an estimate of approximately 2.73 (336/123) filings per fund per year. However, we are not able to determine whether this commenter's estimate of the average number of filings per fund is representative of other fund complexes. A comparable estimate for other filers is not readily obtainable from XBRL filings data since a number of XBRL filings report risk/return summary information for more than one fund.

[304] *See* letters from Federated I and II; ICI I and II; and USBFS.

[305] Thus, for the initial response using Inline XBRL, we estimate that funds will experience a net increase in hour burden of 3.5 hours (4.0 hours − 0.5 hours = 3.5 hours).

[306] *See* note 50 above and accompanying text.

[307] The calculation below considers the aggregate average yearly change in burden incurred by each of the two categories of funds during the first three years under the amendments. Based on staff analysis of data obtained from Morningstar Direct, as of May 2018, we estimate that a $1 billion asset threshold for groups of related investment companies will provide an extended compliance period to approximately two-thirds, or approximately 67%, of all mutual funds affected by the Inline XBRL requirements. *See* note 150 and accompanying text.

Funds that are phased in during year two are assumed to incur no change in burden in year one. Funds that are phased in during year three are assumed to incur no change in burden in years one and two.

Funds phased in during year two: 33% × 11,181 funds = 3,690 funds. Aggregate average yearly change in internal burden for funds phased in during year one: 3,690 funds × {[0 + 3.5 + (0.36 + 1.36) × (− 0.5)]/3} hours per fund = 3,247 hours.

Funds phased in during year three: 67% × 11,181 funds = 7,491 funds. Aggregate average yearly change in internal burden for funds phased in during year two: 7,491 funds × {[0 + 0 + 3.5 + (0.36) × (− 0.5)]/3} hours per fund = 8,290 hours.

Aggregate average yearly change in burden: 3,247 + 8,290 = 11,537 hours.

[308] *See* note 50 above and accompanying text.

[309] Funds are estimated to incur an additional $10 per year beginning with the first year of compliance for their phase-in category. The calculation below considers the aggregate average yearly change in external cost incurred by each of the two categories of funds during the first three years under the amendments. *See* note 307 above.

Funds phased in during year two: 33% × 11,181 funds = 3,690 funds. Average yearly change in external cost per fund: [$0 + $10 + $10]/3 = $6.67 per fund. Aggregate average yearly change in external cost for all funds phased in during year one: 3,690 funds × $6.67 per fund = $24,612.

Funds phased in during year three: 67% × 11,181 funds = 7,491 funds. Average yearly change in external cost per fund: [$0 + $0 + $10]/3 = $3.33 per fund. Aggregate average yearly change in external cost for all funds phased in during year two: 7,491 funds × $3.33 per fund = $24,945.

Aggregate average yearly change in external cost: $24,612 + $24,945 = $49,557.

[310] 15,206 responses × (− 1) hour per response = − 15,206 hours.

1.36 responses per fund × (− 1) hour per response = − 1.36 hours per fund.

estimate of 11,106 funds.[311] Based on updated industry figures, the existing XBRL requirements for funds will require 182,472 hours of in-house personnel time and $9,951,090 in the cost of services of outside professionals.[312] We estimate that in the first three years under the amendments, the aggregate average yearly burden of XBRL requirements for funds will decrease to 178,803 hours of in-house personnel time[313] and the aggregate average yearly cost of services of outside professionals will increase to $10,000,647,[314] which represents a decrease of 3,669 hours of in-house personnel time[315] and an increase of $49,557 in the cost of services of outside professionals,[316] or a decrease of 0.33 hours of in-house personnel time per filer[317] and an increase of $4.43 in the cost of services of outside professionals per filer.[318]

We are submitting these revised burden estimates to OMB for review in accordance with the PRA and its implementing regulations.[319]

2. Regulation S–K and Regulation S–T

Regulation S–K (OMB Control No. 3235–0071) specifies information that must be provided in filings under both the Securities Act and the Exchange Act. Regulation S–T (OMB Control No. 3235–0424) specifies the requirements that govern the electronic submission of documents. The amendments will revise rules under Regulations S–K and S–T. Any changes in the paperwork burden arising from these amendments, however, will be reflected in the Interactive Data collection of information and the Mutual Fund Interactive Data collection of information. The rules in Regulations S–K and S–T do not impose any separate burden. We assign one burden hour each to Regulations S–K and S–T for administrative convenience to reflect the fact that these regulations do not impose any direct burden on filers.[320]

VI. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with the Regulatory Flexibility Act (''RFA'').[321] This FRFA relates to amendments that will require operating companies to provide financial statement information and funds to provide risk/return summary information to the Commission in the Inline XBRL format.

A. Need for, and Objectives of, the Final Amendments

The primary reason for, and objective of, these amendments is to improve the usefulness and quality of, and, over time, to decrease the cost of preparing for submission, certain information that filers are required to submit to the Commission in interactive data form. The need for, and objectives of, the final amendments are discussed in more detail in Section III.A above.

B. Significant Issues Raised by Public Comments

In the Inline XBRL Proposing Release, the Commission requested comment on any aspect of the Initial Regulatory Flexibility Analysis (''IRFA''), including the number of small entities that would be affected by the proposed rules, the nature of the impact, and how to quantify the impact of the amendments. We did not receive comments specifically addressing the IRFA. Several commenters, however, addressed aspects of the proposed amendments that could potentially affect small entities. In particular, several commenters expressed concern that the proposed transition to Inline XBRL will have a relatively greater impact on smaller filers. To facilitate transition for smaller filers, the majority of the commenters that addressed this issue supported a phase-in period.[322] Several commenters also recommended that Form 10–Q filers not be required to file Form 10–K in Inline XBRL until after they have filed Form 10–Q in Inline XBRL.[323] Several commenters opposed requiring Inline XBRL for some or all filers.[324] A few commenters that specifically discussed risk/return summaries expressed concern about the burden to filers of the initial transition to Inline XBRL and the elimination of the 15 business day filing period.[325]

To alleviate the potential impact of transition to Inline XBRL on smaller operating company filers, we are adopting, as proposed, the phased compliance dates that defer the Inline XBRL requirement until the fourth year after the effective date for non-accelerated filers that prepare their financial statements in accordance with U.S. GAAP. In a modification from the proposal, in response to comments, and to further alleviate the potential impact of transition for all domestic form filers, including small entities, domestic form filers will be required to comply beginning with their first Form 10–Q for a fiscal period ending on or after the applicable compliance date, as opposed to the first filing for a fiscal period ending on or after that date, to enable filers to gain experience with Inline XBRL through less complex filings.

Further, to alleviate the potential impact of transition to Inline XBRL on smaller fund filers, we are postponing the proposed phased compliance dates to defer the Inline XBRL requirement by an additional year. To facilitate XBRL submissions, as proposed, and consistent with commenter input, we are permitting concurrent submission of risk/return summary XBRL data with certain post-effective amendments under Rule 485(b).

C. Small Entities Subject to the Amendments

The amendments will affect some small entities. The RFA defines ''small entity'' to mean ''small business'', ''small organization'', or ''small governmental jurisdiction''.[326] For purposes of the RFA, under our rules, an entity, other than an investment company, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year.[327] We estimate that there are approximately 1,163 filers, other than investment companies, that may be considered small entities and are subject to the amendments.[328] All of these filers will

[311] *See* Inline XBRL Proposing Release, nn. 219–220.

15,104 responses × (11 + 1) hours per response = 181,248 hours.

11,106 funds × $890 per fund = $9,884,340.

[312] *See* note 303 above. 15,206 responses × (11 + 1) hours per response = 182,472 hours.

11,181 funds × $890 per fund = $9,951,090.

[313] 182,472 − 15,206 + 11,537 = 178,803 hours. *See* notes 307, 310, and 312 above.

[314] $9,951,090 + $49,557 = $10,000,647. *See* notes 309 and 312 above.

[315] − 15,206 + 11,537 = − 3,669 hours. *See* notes 307 and 310 above.

[316] *See* note 309 above.

[317] − 3,669 hours/11,181 filers = − 0.33 hours per filer. *See* notes 50 and 315 above.

[318] $49,557/11,181 filers = $4.43 per filer. *See* notes 50 and 309 above.

[319] 44 U.S.C. 3507(d)*;* 5 CFR 1320.11.

[320] For purposes of the PRA, we estimate that no funds participate in the 2005 XBRL Voluntary Program each year. This information collection, therefore, imposes no paperwork burden. The proposed termination of the program will therefore not result in changes in burden, except the elimination of one hour associated with this information collection for administrative purposes.

[321] 5 U.S.C. 601 *et seq.*

[322] *See* notes 157–158 above.

[323] *See* note 161 above.

[324] *See* note 83 above.

[325] *See* note 115 above. One of these commenters specifically mentioned the concern that the requirement would impose costs on smaller registrants. *See* letter from USBFS.

[326] 5 U.S.C. 601(6).

[327] 17 CFR 240.0–10(a).

[328] This estimate is based on staff analysis of XBRL data submitted by filers, other than co-

Continued

be required to comply with the amendments by the end of the phase-in.

In addition, for purposes of the RFA, an investment company, including a BDC, is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[329] We estimate that, as of December 31, 2017, there were 54 open-end investment companies that would be considered small entities, including open-end ETFs.[330]

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

All filers subject to the amendments currently are required to file an Interactive Data File entirely as an exhibit to their Commission filings. Under the amendments, filers will be required to embed part of the Interactive Data File within an HTML document using Inline XBRL and include the rest in an exhibit to that document. The requirement to use Inline XBRL will result in a small initial switching cost for filers but, as discussed in Sections III.B.1.a and V.C above, overall, for most filers, we anticipate that the use of Inline XBRL will, over time, reduce the ongoing internal burden of compliance with the XBRL requirements due to the removal of the requirement to include the entire Interactive Data File within an exhibit and slightly increase the external cost burden of compliance with the XBRL requirements due to modifications to XBRL preparation software.[331] We also expect that the adopted elimination of the requirements to post the Interactive Data File on filers' websites will reduce their compliance costs.[332]

The Inline XBRL requirement is expected to result in an initial cost of transition for filers when the requirement is implemented. The professional skills necessary for this requirement may be developed internally by filers or outsourced to third-party vendors. To that end, filer costs may include obtaining Inline XBRL preparation software or service capabilities from their own or third-party sources. Filers that already use their own or third-party Inline XBRL enabled filing solutions or filing solutions that can readily be modified to accommodate the Inline XBRL format are expected to incur a minimal initial cost.[333] Although we recognize the likelihood of somewhat greater initial costs being incurred by filers that do not use such filing solutions, we believe that the initial cost of transition to Inline XBRL for those filers will still be small. In particular, we expect the cost to be small because the amendments consist primarily of an electronic format change. The amendments do not modify the substance of the XBRL requirements and thus do not affect the disclosure mapping process, which precedes the creation of the XBRL submission and accounts for the overwhelming majority of the XBRL preparation burden.

Inline XBRL cannot be used with the ASCII format. Thus, filers that prepare the Related Official Filing in ASCII will incur additional costs of switching to HTML, and any fixed costs of such a change will have a relatively greater effect on smaller entities. We continue to believe that such costs will be minimal. First, a relatively small proportion of filers will have to switch to HTML as a result of the amendments.[334] Second, the average costs of switching from ASCII to HTML are expected to be small because the software tools to prepare and file documents in HTML are widely used and the incremental cost of HTML features is minimal.[335] We continue to believe that the remaining impact on smaller ASCII filers, if any, will be alleviated by the phase-in.

The amendments are discussed in detail in Section III.A above. We discuss the economic impact, including the estimated compliance costs and burdens, of the amendments in Section III.B and Section V above.

E. Agency Action To Minimize Effect on Small Entities

The RFA directs us to consider alternatives that would accomplish the stated objectives of our amendments, while minimizing any significant adverse impact on small entities. Specifically, we considered the following alternatives: (1) Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance and reporting requirements for small entities under the amendments; (3) using performance rather than design standards; and (4) exempting small entities from coverage of all or part of these amendments.

The amendments include different compliance schedules for operating companies, with a three-year phase-in based on filer size and use of accounting principles. Operating company small entities will not be subject to the Inline XBRL requirements until the final year of the phase-in. This different compliance timetable will enable smaller filers to defer the burden of any additional cost, learn from filers that comply earlier, and take advantage of any increases in the quality or decreases in the price of Inline XBRL preparation services or software that arise from expertise or competition that develops prior to their compliance date. Commenters generally supported the proposed phased approach to compliance. Additionally, in response to comments, we are changing the phase-in for operating company filers to start with a Form 10–Q filing, which will simplify the initial compliance and reporting requirement for all domestic form filers, including small entities.

With respect to fund filers, the amendments similarly include different compliance schedules for funds based on filer size. The amendments extend the phase-in by an additional year relative to the proposal in response to commenter suggestions and concerns about the burden of transition for smaller funds. Thus, fund small entities will not be subject to the Inline XBRL requirements or the elimination of the 15 business day filing period until three years after the effective date of the amendments.

The elimination of the website posting requirements also will consolidate and simplify the compliance and reporting requirements for all operating companies and funds with respect to their interactive data. We do not believe that further clarification, consolidation, or simplification for small entities is appropriate because we believe that phased mandatory conversion of all filers to Inline XBRL is necessary to realize the benefits of Inline XBRL to data users.

We are not adopting a partial or complete exemption from the Inline XBRL requirements or the use of performance rather than design standards for filers that are small entities because we believe that the long-term, consistent use of Inline XBRL may reduce the time and effort required to prepare XBRL filings, simplify the review process for filers, and improve the usefulness and quality of XBRL data, thereby benefiting investors, other

registrants, with EDGAR filings of Forms 10–K, 20–F, and 40–F and amendments filed during the calendar year 2017.

[329] 17 CFR 270.0–10(a).

[330] This estimate is derived from an analysis of data obtained from Morningstar Direct as well as data reported on Form N–SAR filed with the Commission for the period ending December 31, 2017.

[331] *See* notes 300, 301, 317, and 318 above.

[332] *See* notes 291 and 310 above.

[333] *See* notes 61–62 above.

[334] *See* notes 238–241 above and accompanying text.

[335] *See* note 242 above.

market participants, and other data users and potentially increasing the use of XBRL data. We also note that the elimination of the website posting requirements is expected to decrease the burden on all filers, including small entities.

VII. Statutory Basis

The amendments contained in this document are being adopted under the authority set forth in Sections 7, 10, and 19(a) of the Securities Act; [336] Sections 3, 12, 13, 15(d), 23(a), and 35A of the Exchange Act; [337] Sections 8, 24, 30, and 38 of the Investment Company Act; [338] and Section 3(a) of the Sarbanes-Oxley Act.[339]

Text of the Final Rule and Form Amendments

List of Subjects

17 CFR Part 229

Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 232

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

17 CFR Parts 239 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons stated in the preamble, the Commission is amending title 17, chapter II of the Code of the Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

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

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l,* 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.;* 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111–203, 124 Stat. 1904 (2010); and Sec. 102, Pub. L. 112–106, 126 Stat. 310 (2012).

■ 2. Amend § 229.601 by:

■ a. Removing and reserving entry (100) from the exhibit table in paragraph (a);

■ b. Removing and reserving paragraph (b)(100); and

■ c. Revising paragraph (b)(101).

The revision reads as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(100) [Reserved]

(101) *Interactive Data File.* Where a registrant prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, an Interactive Data File (§ 232.11 of this chapter) is:

(i) *Required to be submitted.* Required to be submitted to the Commission in the manner provided by § 232.405 of this chapter if the registrant does not prepare its financial statements in accordance with 17 CFR 210.6–01 through 210.6–10 (Article 6 of Regulation S–X), except that an Interactive Data File:

(A) First is required for a periodic report on Form 10–Q (§ 249.308a of this chapter), Form 20–F (§ 249.220f of this chapter), or Form 40–F (§ 249.240f of this chapter), as applicable;

(B) Is required for a registration statement under the Securities Act only if the registration statement contains a price or price range; and

(C) Is required for a Form 8–K (§ 249.308 of this chapter) only when the Form 8–K contains audited annual financial statements that are a revised version of financial statements that previously were filed with the Commission and that have been revised pursuant to applicable accounting standards to reflect the effects of certain subsequent events, including a discontinued operation, a change in reportable segments or a change in accounting principle. In such case, the Interactive Data File will be required only as to such revised financial statements regardless of whether the Form 8–K contains other financial statements.

(ii) *Permitted to be submitted.* Permitted to be submitted to the Commission in the manner provided by § 232.405 of this chapter if the:

(A) Registrant does not prepare its financial statements in accordance with 17 CFR 210.6–01 through 210.6–10 (Article 6 of Regulation S–X); and

(B) Interactive Data File is not required to be submitted to the Commission under paragraph (b)(101)(i) of this section.

Instruction 1 to paragraphs (b)(101)(i) and (ii): When an Interactive Data File is submitted as provided by § 232.405(a)(3)(i) of this chapter, the exhibit index must include the word ''Inline'' within the title description for any eXtensible Business Reporting Language (XBRL)-related exhibit.

(iii) *Not permitted to be submitted.* Not permitted to be submitted to the Commission if the registrant prepares its financial statements in accordance with 17 CFR 210.6–01 through 210.6–10 (Article 6 of Regulation S–X).

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

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

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 4. Amend § 230.144 by revising paragraph (c)(1)(ii) and paragraphs 1.b and 2 of Note to § 230.144(c) to read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(c) * * *

(1) * * *

(ii) Submitted electronically every Interactive Data File (§ 232.11 of this chapter) required to be submitted pursuant to § 232.405 of this chapter, during the 12 months preceding such sale (or for such shorter period that the issuer was required to submit such files); or

* * * * *

Note to § 230.144(c): * * *

1. * * *

b. Submitted electronically every Interactive Data File (§ 232.11 of this chapter) required to be submitted pursuant to § 232.405 of this chapter, during the preceding 12 months (or for such shorter period that the issuer was required to submit such files); or

2. A written statement from the issuer that it has complied with such reporting or submission requirements.

* * * * *

[336] 15 U.S.C. 77g, 77j and 77s(a).

[337] 15 U.S.C. 78c, 78*l,* 78m, 78o(d), 78w(a) and 78*ll.*

[338] 15 U.S.C. 80a–8, 80a–24, 80a–29 and 80a–37.

[339] Public Law 107–204, 116 Stat. 745.

■ 5. Amend § 230.485 by revising paragraph (c)(3) to read as follows:

§ 230.485 Effective date of post-effective amendments filed by certain registered investment companies.

* * * * *

(c) * * *

(3) A registrant's ability to file a post-effective amendment, other than an amendment filed solely for purposes of submitting an Interactive Data File, under paragraph (b) of this section is automatically suspended if a registrant fails to submit any Interactive Data File as required by General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter). A suspension under this paragraph (c)(3) shall become effective at such time as the registrant fails to submit an Interactive Data File as required by General Instruction C.3.(g) of Form N–1A. Any such suspension, so long as it is in effect, shall apply to any post-effective amendment that is filed after the suspension becomes effective, but shall not apply to any post-effective amendment that was filed before the suspension became effective. Any suspension shall apply only to the ability to file a post-effective amendment pursuant to paragraph (b) of this section and shall not otherwise affect any post-effective amendment. Any suspension under this paragraph (c)(3) shall terminate as soon as a registrant has submitted the Interactive Data File as required by General Instruction C.3.(g) of Form N–1A.

* * * * *

■ 6. Amend § 230.497 by revising the last sentence of paragraphs (c) and (e) to read as follows:

§ 230.497 Filing of investment company prospectuses—number of copies.

* * * * *

(c) * * * Investment companies filing on Form N–1A must, if applicable pursuant to General Instruction C.3.(g) of Form N–1A, submit an Interactive Data File (§ 232.11 of this chapter).

* * * * *

(e) * * * Investment companies filing on Form N–1A must, if applicable pursuant to General Instruction C.3.(g) of Form N–1A, submit an Interactive Data File (§ 232.11 of this chapter).

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

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

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 8. Amend § 232.11 by revising the definition of ''Interactive Data File'', removing the definition of ''Promptly'', revising the definition of ''Related Official Filing'', and removing the definition of ''XBRL-Related Documents'' to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * * *

Interactive Data File. The term *Interactive Data File* means the machine-readable computer code that presents information in eXtensible Business Reporting Language (XBRL) electronic format pursuant to § 232.405 and as specified by the EDGAR Filer Manual. When a filing is submitted using Inline XBRL as provided by § 232.405(a)(3), a portion of the Interactive Data File is embedded into a filing with the remainder submitted as an exhibit to the filing.

* * * * *

Related Official Filing. The term *Related Official Filing* means the ASCII or HTML format part of the official filing with which all or part of an Interactive Data File appears as an exhibit or, in the case of a filing on Form N–1A (§§ 239.15A and 274.11A of this chapter), the ASCII or HTML format part of an official filing that contains the information to which an Interactive Data File corresponds.

* * * * *

■ 9. Amend § 232.201 by revising paragraphs (b) and (c) to read as follows:

§ 232.201 Temporary hardship exemption.

* * * * *

(b) An electronic format copy of the filed paper format document shall be submitted to the Commission within six business days of filing the paper format document. Failure to submit the confirming electronic copy of a paper filing made in reliance on the temporary hardship exemption, as required in this paragraph (b), will result in ineligibility to use Form SF–3 (*see* § 239.45 of this chapter). The electronic format version shall contain the following statement in capital letters at the top of the first page of the document:

THIS DOCUMENT IS A COPY OF THE (*specify document*) FILED ON (*date*) PURSUANT TO A RULE 201 TEMPORARY HARDSHIP EXEMPTION

Note 1 to paragraph (b): As provided elsewhere in this chapter, failure to submit the confirming electronic copy of a paper filing made in reliance on the temporary hardship exemption, as required in paragraph (b) of this section, will result in ineligibility to use Forms S–3, S–8, and F–3 (*see* §§ 239.13, 239.16b, and 239.33 of this chapter, respectively), restrict incorporation by reference into an electronic filing of the document submitted in paper (*see* § 232.303), and toll certain time periods associated with tender offers (*see* §§ 240.13e–4(f)(13) and 240.14e-1(e) of this chapter).

Note 2 to paragraph (b): If the exemption relates to an exhibit only, the requirement to submit a confirming electronic copy shall be satisfied by refiling the exhibit in electronic format in an amendment to the filing to which it relates. The confirming copy tag should not be used. The amendment should note that the purpose of the amendment is to add an electronic copy of an exhibit previously filed in paper pursuant to a temporary hardship exemption.

(c) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an Interactive Data File (§ 232.11) as required pursuant to § 232.405, the electronic filer still can timely satisfy the requirement to submit the Interactive Data File in the following manner:

(1) Substitute for the Interactive Data File exhibit a document that sets forth the following legend:

IN ACCORDANCE WITH THE TEMPORARY HARDSHIP EXEMPTION PROVIDED BY RULE 201 OF REGULATION S–T, THE DATE BY WHICH THE INTERACTIVE DATA FILE IS REQUIRED TO BE SUBMITTED HAS BEEN EXTENDED BY SIX BUSINESS DAYS; and

(2) Submit the required Interactive Data File no later than six business days after the Interactive Data File originally was required to be submitted.

Note 1 to paragraph (c): As provided elsewhere in this chapter, electronic filers unable to submit the Interactive Data File under the circumstances specified by paragraph (c) of this section, must comply with the provisions of this section and cannot use Form 12b–25 (§ 249.322 of this chapter) as a notification of late filing. As also provided elsewhere in this chapter, failure to submit the Interactive Data File as required by the end of the six-business-day period specified by paragraph (c) of this section will result in ineligibility to use Forms S–3, S–8, and F–3 (§§ 239.13, 239.16b, and 239.33 of this chapter, respectively), constitute a failure to have filed all required reports for purposes of the current public information requirements of § 230.144(c)(1) of this chapter, and, pursuant to § 230.485(c)(3) of this chapter, suspend the ability to file post-effective amendments under § 230.485(b) of this chapter.

* * * * *

■ 10. Amend § 232.202 by:

■ a. Revising paragraphs (a) introductory text, (a)(2), (b)(2) and (3), (c)(1), and (c)(2) introductory text;
■ b. Removing paragraph (c)(3); and
■ c. Revising paragraphs (d)(1) and (2) and Notes 3 and 4 to § 232.202.

The revisions read as follows:

§ 232.202 Continuing hardship exemption.

(a) An electronic filer may apply in writing for a continuing hardship exemption if all or part of a filing, group of filings or submission, other than a Form ID (§§ 239.63, 249.446, 269.7, and 274.402 of this chapter), a Form D (§ 239.500 of this chapter), or an Asset Data File (§ 232.11), otherwise to be filed or submitted in electronic format cannot be so filed or submitted, as applicable, without undue burden or expense. Such written application shall be made at least ten business days before the required due date of the filing(s) or submission(s) or the proposed filing or submission date, as appropriate, or within such shorter period as may be permitted. The written application shall contain the information set forth in paragraph (b) of this section.

* * * * *

(2) If the Commission, or the staff acting pursuant to delegated authority, denies the application for a continuing hardship exemption, the electronic filer shall file or submit the required document or Interactive Data File in electronic format, as applicable, on the required due date or the proposed filing or submission date, or such other date as may be permitted.

* * * * *

(b) * * *

(2) The burden and expense involved to employ alternative means to make the electronic submission; and/or

(3) The reasons for not submitting electronically the document, group of documents or Interactive Data File, as well as the justification for the requested time period.

(c) * * *

(1) Electronic filing of a document or group of documents, not electronic submission of an Interactive Data File, then the electronic filer shall submit the document or group of documents for which the continuing hardship exemption is granted in paper format on the required due date specified in the applicable form, rule or regulation, or the proposed filing date, as appropriate and the following legend shall be placed in capital letters at the top of the cover page of the paper format document(s):

IN ACCORDANCE WITH RULE 202 OF REGULATION S–T, THIS (specify document) IS BEING FILED IN PAPER PURSUANT TO A CONTINUING HARDSHIP EXEMPTION.

(2) Electronic submission of an Interactive Data File, then the electronic filer shall substitute for the Interactive Data File exhibit a document that sets forth one of the following legends, as appropriate:

* * * * *

(d) * * *

(1) Electronic filing of a document or group of documents, not electronic submission of an Interactive Data File, then the grant may be conditioned upon the filing of the document or group of documents that is the subject of the exemption in electronic format upon the expiration of the period for which the exemption is granted. The electronic format version shall contain the following statement in capital letters at the top of the first page of the document:

THIS DOCUMENT IS A COPY OF THE (specify document) FILED ON (date) PURSUANT TO A RULE 202(d) CONTINUING HARDSHIP EXEMPTION.

(2) Electronic submission of an Interactive Data File, then the grant may be conditioned upon the electronic submission of the Interactive Data File that is the subject of the exemption upon the expiration of the period for which the exemption is granted.

* * * * *

Note 3 to § 232.202: As provided elsewhere in this chapter, failure to submit a required confirming electronic copy of a paper filing made in reliance on a continuing hardship exemption granted pursuant to paragraph (d) of this section will result in ineligibility to use Forms S–3, S–8, and F–3 (*see,* §§ 239.13, 239.16b, and 239.33 of this chapter, respectively), restrict incorporation by reference into an electronic filing of the document submitted in paper (*see* § 232.303), and toll certain time periods associated with tender offers (*see* §§ 240.13e–4(f)(13) and 240.14e–1(e) of this chapter).

Note 4 to § 232.202: As provided elsewhere in this chapter, failure to submit the Interactive Data File as required by § 232.405 by the end of the continuing hardship exemption if granted for a limited period of time, will result in ineligibility to use Forms S–3, S–8, and F–3 (§§ 239.13, 239.16b, and 239.33 of this chapter, respectively), constitute a failure to have filed all required reports for purposes of the current public information requirements of § 230.144(c)(1) of this chapter, and, pursuant to § 230.485(c)(3) of this chapter, suspend the ability to file post-effective amendments under § 230.485(b) of this chapter.

■ 11. Amend § 232.305 by revising paragraph (b) to read as follows:

§ 232.305 Number of characters per line; tabular and columnar information.

* * * * *

(b) Paragraph (a) of this section does not apply to HTML documents, Interactive Data Files (§ 232.11) or Interactive Data Financial Reports (§ 232.11).

■ 12. Revise the undesignated center heading between §§ 232.314 and 232.401 to read as follows:

Interactive Data

§§ 232.401 and 232.402 [Removed and Reserved]

■ 13. Remove and reserve §§ 232.401 and 232.402.

■ 14. Amend § 232.405 by:
■ a. Revising the section heading;
■ b. Removing Preliminary Notes 1, 2, and 3;
■ c. Adding introductory text;
■ d. Revising the heading of paragraph (a) and paragraphs (a)(1) and (2);
■ e. Removing paragraph (a)(4) and redesignating paragraph (a)(3) as paragraph (a)(4);
■ f. Adding new paragraph (a)(3);
■ g. Revising newly redesignated paragraph (a)(4);
■ h. Revising the introductory text of paragraphs (d) and (e) and paragraph (f);
■ i. Removing paragraph (g); and
■ j. Revising Note to § 232.405.

The revisions and addition read as follows:

§ 232.405 Interactive Data File submissions.

This section applies to electronic filers that submit Interactive Data Files. Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), and General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter) specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in the note to this section. This section imposes content, format and submission requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Filing (§ 232.11).

(a) *Content, format, and submission requirements—General.* * * *

(1) Comply with the content, format, and submission requirements of this section;

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), or General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), as applicable;

(3) Be submitted using Inline XBRL:

(i) If the electronic filer is not an open-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) and is not within one of the categories specified in paragraph (f)(1)(i) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to:

(A) A filing that contains the disclosure this section requires to be tagged; or

(B) An amendment to a filing that contains the disclosure this section requires to be tagged if the amendment is filed no more than 30 days after the earlier of the due date or filing date of the filing and the Interactive Data File is the first Interactive Data File the electronic filer submits; or

(ii) If the electronic filer is an open-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) and is not within one of the categories specified in paragraph (f)(1)(ii) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to a filing that contains the disclosure this section requires to be tagged; and

(4) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, either § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), or General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter).

* * * * *

(d) *Format—Footnotes—Generally.* The part of the Interactive Data File for which the corresponding data in the Related Official Filing consists of footnotes to financial statements must comply with the requirements of paragraphs (c)(1) and (2) of this section, as modified by this paragraph (d). Footnotes to financial statements must be tagged as follows:

* * * * *

(e) *Format—Schedules—Generally.* The part of the Interactive Data File for which the corresponding data in the Related Official Filing consists of financial statement schedules as set forth in 17 CFR 210.12–01 through 210.12–29 (Article 12 of Regulation S–X) must comply with the requirements of paragraphs (c)(1) and (2) of this section, as modified by this paragraph (e). Financial statement schedules as set forth in 17 CFR 210.12–01 through 210.12–29 (Article 12 of Regulation S–X) must be tagged as follows:

* * * * *

(f) *Format—Phase-in for Inline XBRL submissions.* (1) The following electronic filers may choose to submit an Interactive Data File:

(i) In the manner specified in paragraph (f)(2) of this section rather than as specified by paragraph (a)(3)(i) of this section: Any electronic filer that is not an open-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) if it is within one of the following categories, provided, however, that an Interactive Data File first is required to be submitted in the manner specified by paragraph (a)(3)(i) of this section for a periodic report on Form 10–Q (§ 249.308a of this chapter) if the filer reports on Form 10–Q:

(A) A large accelerated filer (§ 240.12b–2 of this chapter) that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and none of the financial statements for which an Interactive Data File is required is for a fiscal period that ends on or after June 15, 2019;

(B) An accelerated filer (§ 240.12b–2 of this chapter) that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and none of the financial statements for which an Interactive Data File is required is for a fiscal period that ends on or after June 15, 2020; and

(C) A filer not specified in paragraph (f)(1)(i)(A) or (B) of this section that prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board and none of the financial statements for which an Interactive Data File is required is for a fiscal period that ends on or after June 15, 2021.

(ii) In the manner specified in paragraph (f)(3) of this section rather than as specified by paragraph (a)(3)(ii) of this section: Any electronic filer that is an open-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) that, together with other investment companies in the same ''group of related investment companies,'' as such term is defined in § 270.0–10 of this chapter, has assets of:

(A) $1 billion or more as of the end of the most recent fiscal year until it files an initial registration statement (or post-effective amendment that is an annual update to an effective registration statement) that becomes effective on or after September 17, 2020; and

(B) Less than $1 billion as of the end of the most recent fiscal year until it files an initial registration statement (or post-effective amendment that is an annual update to an effective registration statement) that becomes effective on or after September 17, 2021.

(2) The electronic filers specified in paragraph (f)(1)(i) of this section may submit the Interactive Data File solely as an exhibit to:

(i) A filing that contains the disclosure this section requires to be tagged; or

(ii) An amendment to a filing that contains the disclosure this section requires to be tagged if the amendment is filed no more than 30 days after the earlier of the due date or filing date of the filing and the Interactive Data File is the first Interactive Data File the electronic filer submits.

(3) The electronic filers specified in paragraph (f)(1)(ii) of this section may submit the Interactive Data File solely as an exhibit to a filing that contains the disclosure this section requires to be tagged, up to 15 business days after the effective date of the registration statement or post-effective amendment that contains the related information, or the filing of a form of prospectus made pursuant to § 230.497(c) or (e) of this chapter (paragraph (c) or (e) of Rule 497).

Note to § 232.405: Section 229.601(b)(101) of this chapter (Item 601(b)(101) of

Regulation S–K) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Forms S–1 (§ 239.11 of this chapter), S–3 (§ 239.13 of this chapter), S–4 (§ 239.25 of this chapter), S–11 (§ 239.18 of this chapter), F–1 (§ 239.31 of this chapter), F–3 (§ 239.33 of this chapter), F–4 (§ 239.34 of this chapter), 10–K (§ 249.310 of this chapter), 10–Q (§ 249.308a of this chapter), and 8–K (§ 249.308 of this chapter). Paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form F–10. Paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form 20–F. Paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter) and Paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter) specify the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form 40–F and Form 6–K (§ 249.240f of this chapter and § 249.306 of this chapter), respectively. Section 229.601(b)(101) (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of Form F–10, paragraph 101 of the Instructions as to Exhibits of Form 20–F, paragraph B.(15) of the General Instructions to Form 40–F, and paragraph C.(6) of the General Instructions to Form 6–K all prohibit submission of an Interactive Data File by an issuer that prepares its financial statements in accordance with 17 CFR 210.6-01 through 210.6–10 (Article 6 of Regulation S–X). For an issuer that is an open-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter) specifies the circumstances under which an Interactive Data File must be submitted.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78o–7 note, 78u–5, 78w(a), 78*ll*, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, 80a–37; and 107 Pub. L. 112–106, 126 Stat. 312, unless otherwise noted.

* * * * *

■ 16. Amend § 239.13 by revising paragraph (a)(7)(ii) to read as follows:

§ 239.13 Form S–3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

(a) * * *

(7) * * *

(ii) Submitted electronically to the Commission all Interactive Data Files required to be submitted pursuant to § 232.405 of this chapter during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the registrant was required to submit such files).

* * * * *

■ 17. Amend Form S–3 (referenced in § 239.13) by revising General Instruction I.A.7.(b) to read as follows:

Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM S–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form S–3

* * * * *

A. * * *

7. * * *

(b) Submitted electronically to the Commission all Interactive Data Files required to be submitted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the registrant was required to submit such files).

* * * * *

■ 18. Amend § 239.16b by revising paragraph (b)(2) to read as follows:

§ 239.16b Form S–8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to employee benefit plans.

* * * * *

(b) * * *

(2) Submitted electronically to the Commission all Interactive Data Files required to be submitted pursuant to § 232.405 of this chapter during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the registrant was required to submit such files).

■ 19. Amend Form S–8 (referenced in § 239.16b) by revising General Instruction A.3.(b) to read as follows:

Note: The text of Form S–8 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM S–8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

A. Rule as to Use of Form S–8

* * * * *

3. * * *

(b) Submitted electronically to the Commission all Interactive Data Files required to be submitted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the registrant was required to submit such files).

* * * * *

■ 20. Amend § 239.33 by revising paragraph (a)(6)(ii) to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * * *

(a) * * *

(6) * * *

(ii) Submitted electronically to the Commission all Interactive Data Files required to be submitted pursuant to § 232.405 of this chapter during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the registrant was required to submit such files).

* * * * *

■ 21. Amend Form F–3 (referenced in § 239.33) by revising General Instruction I.A.6.(ii) to read as follows:

Note: The text of Form F–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM F–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F–3

* * * * *

A. Registrant Requirements

* * * * *

6. Electronic filings. * * *

* * * * *

(ii) Submitted electronically to the Commission all Interactive Data Files required to be submitted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the registrant was required to submit such files).

* * * * *

■ 22. Amend Form F–10 (referenced in § 239.40) by revising paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers to read as follows:

Note: The text of Form F–10 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM F–10

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

PART II—INFORMATION NOT REQUIRED TO BE DELIVERED TO OFFEREES OR PURCHASERS

* * * * *

(101) Where a registrant prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, an Interactive Data File (§ 232.11 of this chapter) is:

(a) *Required to be submitted.* Required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the registrant does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*), except that an Interactive Data File:

(i) First is required for a periodic report on Form 10–Q (§ 249.308a of this chapter), Form 20–F (§ 249.220f of this chapter), or Form 40–F (§ 249.240f of this chapter), as applicable; and

(ii) Is required for a registration statement under the Securities Act only if the registration statement contains a price or price range.

(b) *Permitted to be submitted.* Permitted to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the:

(i) Registrant does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*); and

(ii) Interactive Data File is not required to be submitted to the Commission under subparagraph (a) of this paragraph (101).

(c) *Not permitted to be submitted.* Not permitted to be submitted to the Commission if the registrant prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

Instruction to paragraphs (101)(a) and (b): When an Interactive Data File is submitted as provided by Rule 405(a)(3)(i) of Regulation S–T (§ 232.405(a)(3)(i) of this chapter), the exhibit index must include the word ''Inline'' within the title description for any eXtensible Business Reporting Language (XBRL)-related exhibit.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

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

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78n–1, 78*o*, 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.;* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1887 (2010); and secs. 503 and 602, Pub. L. 112–106, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 24. Amend § 240.13a–14 by revising paragraph (f) to read as follows:

§ 240.13a–14 Certification of disclosure in annual and quarterly reports.

* * * * *

(f) The certification requirements of this section do not apply to an Interactive Data File, as defined in § 232.11 of this chapter (Rule 11 of Regulation S–T).

■ 25. Amend § 240.15d–14 by revising paragraph (f) to read as follows:

§ 240.15d–14 Certification of disclosure in annual and quarterly reports.

* * * * *

(f) The certification requirements of this section do not apply to an Interactive Data File, as defined in § 232.11 of this chapter (Rule 11 of Regulation S–T).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 26. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

■ 27. Amend Form 20–F (referenced in § 249.220f) by:

■ a. Revising the undesignated paragraph on the cover that begins ''Indicate by check mark whether the registrant has submitted electronically'';

■ b. Removing and reserving paragraph 100 of the Instructions as to Exhibits; and

■ c. Revising paragraph 101 of the Instructions as to Exhibits.

The revisions read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 20–F

☐REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

OR

☐ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

* * * * *

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

* * * * *

INSTRUCTIONS AS TO EXHIBITS

* * * * *

100. [Reserved]

101. Interactive Data File. Where a registrant prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, an Interactive Data File (§ 232.11 of this chapter) is:

(a) Required to be submitted. Required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the Form 20–F is an annual report and the registrant does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

(b) Permitted to be submitted. Permitted to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the:

(i) Registrant does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*); and

(ii) Interactive Data File is not required to be submitted to the Commission under subparagraph (a) of this paragraph 101.

(c) Not permitted to be submitted. Not permitted to be submitted to the Commission if the registrant prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

Instruction to paragraphs 101.(a) and (b): When an Interactive Data File is submitted as provided by Rule 405(a)(3)(i) of Regulation S–T (§ 232.405(a)(3)(i) of this chapter), the exhibit index must include the word ''Inline'' within the title description for any eXtensible Business Reporting Language (XBRL)-related exhibit.

■ 28. Amend Form 40–F (referenced in § 249.240f) by:

■ a. Revising the undesignated paragraph on the cover that begins ''Indicate by check mark whether the registrant has submitted electronically''; and

■ b. Revising paragraph B.(15) of the General Instructions.

The revisions read as follows:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 40–F

□REGISTRATION STATEMENT PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

OR

□ANNUAL REPORT PURSUANT TO SECTION 13(a) OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

* * * * *

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

* * * * *

GENERAL INSTRUCTIONS

* * * * *

B. Information To Be Filed on this Form

* * * * *

(15) Where a registrant prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, an Interactive Data File (§ 232.11 of this chapter) is:

(a) *Required to be submitted.* Required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) and, to the extent submitted as an exhibit, listed as exhibit 101, if the Form 40–F is an annual report and the registrant does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

(b) *Permitted to be submitted.* Permitted to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the:

(i) Registrant does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*); and

(ii) Interactive Data File is not required to be submitted to the Commission under subparagraph (a) of this paragraph B.(15).

(c) *Not permitted to be submitted.* Not permitted to be submitted to the Commission if the registrant prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

Instruction to paragraphs B.(15)(a) and (b): When an Interactive Data File is submitted as provided by Rule 405(a)(3)(i) of Regulation S–T (§ 232.405(a)(3)(i) of this chapter), the exhibit index must include the word ''Inline'' within the title description for any eXtensible Business Reporting Language (XBRL)-related exhibit.

* * * * *

■ 29. Amend Form 6–K (referenced in § 249.306) by:

■ a. Removing and reserving paragraph (5) to General Instruction C; and

■ b. Revising paragraph (6) to General Instruction C.

The revisions read as follows:

Note: The text of Form 6–K does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 6–K

REPORT OF FOREIGN PRIVATE ISSUER PURSUANT TO RULE 13a–16 OR 15d–16 OF THE SECURITIES EXCHANGE ACT OF 1934

* * * * *

GENERAL INSTRUCTIONS

* * * * *

C. Preparation and Filing of Report.

* * * * *

(5) [Reserved]

(6) *Interactive Data File.* Where a registrant prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, an Interactive Data File (§ 232.11 of this chapter) is:

(a) *Required to be submitted.* Required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) and, to the extent submitted as an exhibit, listed as exhibit 101, if the registrant does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*), except that an Interactive Data File:

(i) First is required for a periodic report on Form 10–Q (§ 249.308a of this chapter), Form 20–F (§ 249.220f of this chapter), or Form 40–F (§ 249.240f of this chapter), as applicable; and

(ii) Is required for a Form 6–K (§ 249.306 of this chapter) only when the Form 6–K contains either of the following: audited annual financial statements that are a revised version of financial statements that previously were filed with the Commission and that have been revised pursuant to applicable accounting standards to reflect the effects of certain subsequent events, including a discontinued operation, a change in reportable segments or a change in accounting principle; or current interim financial statements included pursuant to the nine-month updating requirement of Item 8.A.5 of Form 20–F. In either such case, the Interactive Data File will be required only as to such revised financial statements or current interim financial statements regardless of whether the Form 6–K contains other financial statements.

(b) *Permitted to be submitted.* Permitted to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the:

(i) Registrant does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*); and

(ii) Interactive Data File is not required to be submitted to the Commission under subparagraph (a) of this paragraph C.(6).

(c) *Not permitted to be submitted.* Not permitted to be submitted to the Commission if the registrant prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

Instruction to paragraphs C.(6)(a) and (b): When an Interactive Data File is submitted as provided by Rule 405(a)(3)(i) of Regulation S–T (§ 232.405(a)(3)(i) of this chapter), the exhibit index must include the word ''Inline'' within the title description for any eXtensible Business Reporting Language (XBRL)-related exhibit.

* * * * *

■ 30. Amend Form 10–Q (referenced in § 249.308a) by revising the undesignated paragraph on the cover that begins ''Indicate by check mark whether the registrant has submitted electronically'' to read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10–Q

* * * * *

☐QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

* * * * *

☐TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

* * * * *

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

* * * * *

■ 31. Amend Form 10–K (referenced in § 249.310) by revising the undesignated paragraph on the cover that begins ''Indicate by check mark whether the registrant has submitted electronically'' to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10–K

* * * * *

☐ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

* * * * *

☐TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

* * * * *

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

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

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 33. Revise § 270.8b–1 to read as follows:

§ 270.8b–1 Scope of §§ 270.8b–1 through 270.8b–32.

The rules contained in §§ 270.8b–1 through 270.8b–32 shall govern all registration statements pursuant to section 8 of the Act (15 U.S.C. 80a–8), including notifications of registration pursuant to section 8(a), and all reports pursuant to section 30(a) or (b) of the Act (15 U.S.C. 80a–29(a) or (b)), including all amendments to such statements and reports, except that any provision in a form covering the same subject matter as any such rule shall be controlling.

■ 34. Amend § 270.8b–2 by revising the introductory text to read as follows:

§ 270.8b–2 Definitions.

Unless the context otherwise requires, the terms in paragraphs (a) through (m) of this section, when used in the rules contained in §§ 270.8b–1 through 270.8b–32, in the rules under section 30(a) or (b) of the Act or in the forms for registration statements and reports pursuant to section 8 or 30(a) or (b) of the Act, shall have the respective meanings indicated in this section. The terms ''EDGAR,'' ''EDGAR Filer Manual,'' ''electronic filer,'' ''electronic filing,'' ''electronic format,'' ''electronic submission,'' ''paper format,'' and ''signature'' shall have the meanings assigned to such terms in part 232 of this chapter (Regulation S–T—General Rules for Electronic Filings).

* * * * *

§ 270.8b–33 [Removed]

■ 35. Remove § 270.8b–33.

§ 270.30a–2 [Amended]

■ 36. Amend § 270.30a–2 by removing paragraph (d).

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 37. The authority citation for part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b),78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, 80a–29, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 38. Amend Form N–1A (referenced in §§ 239.15A and 274.11A) by revising General Instructions B.4.(b) and C.3.(g) to read as follows:

Note: The text of Form N–1A does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N–1A

* * * * *

☐REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

☐REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940

* * * * *

GENERAL INSTRUCTIONS

* * * * *

B. * * *

4. * * *

(b) For registration statements and amendments filed only under the Investment Company Act, the general provisions in rules 8b–1—8b–32 [17 CFR 270.8b–1—270.8b–32] apply to the filing of Form N–1A.

* * * * *

C. * * *

3. * * *

(g) Interactive Data File

(i) An Interactive Data File (§ 232.11 of this chapter) is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S–T (§ 232.405 of this chapter) for any registration statement or post-effective amendment thereto on Form N–1A that includes or amends information provided in response to Items 2, 3, or 4.

(A) Except as required by paragraph (g)(i)(B), the Interactive Data File must be submitted as an amendment to the registration statement to which the Interactive Data File relates. The amendment must be submitted on or before the date the registration statement or post-effective amendment that contains the related information becomes effective.

(B) In the case of a post-effective amendment to a registration statement filed pursuant to paragraphs (b)(1)(i), (ii), (v), or (vii) of rule 485 under the Securities Act [17 CFR 230.485(b)], the Interactive Data File must be submitted either with the filing, or as an amendment to the registration statement to which the Interactive Data Filing relates that is submitted on or before the date the post-effective amendment that contains the related information becomes effective.

(ii) An Interactive Data File is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S–T for any form of prospectus filed pursuant to paragraphs (c) or (e) of rule 497 under the Securities Act [17 CFR 230.497(c) or (e)] that includes information provided in response to Items 2, 3, or 4 that varies from the registration statement. The Interactive Data File must be submitted with the filing made pursuant to rule 497.

(iii) The Interactive Data File must be submitted in accordance with the specifications in the EDGAR Filer Manual, and in such a manner that will permit the information for each Series and, for any information that does not relate to all of the Classes in a filing, each Class of the Fund to be separately identified.

* * * * *

By the Commission.

Dated: June 28, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–14365 Filed 8–15–18; 8:45 am]

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FEDERAL REGISTER

Vol. 83 No. 159 Thursday, August 16, 2018

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Qualified Business Income Deduction; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107892–18]

RIN 1545–BO71

Qualified Business Income Deduction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations concerning the deduction for qualified business income under section 199A of the Internal Revenue Code (Code). The regulations will affect individuals, partnerships, S corporations, trusts, and estates engaged in domestic trades or businesses. The proposed regulations also contain an anti-avoidance rule under section 643 of the Code to treat multiple trusts as a single trust in certain cases. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 1, 2018. Outlines of topics to be discussed at the public hearing scheduled for October 16, 2018, at 10 a.m. must be received by October 1, 2018. If no outlines of topics are received by October 1, 2018 the public hearing will be cancelled.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–107892–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–107892–18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, or via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–107892–18). The public hearing will be held in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Vishal R. Amin, Frank J. Fisher, or Wendy L. Kribell at (202) 317–6850 or Adrienne M. Mikolashek at 202–317–5279; concerning submissions of comments and outlines of topics for the public hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). The Department of the Treasury (Treasury Department) and the IRS request comment on the assumptions, methodology, and burden estimates related to this information collection. Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE-:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by October 15, 2018.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

Details of the estimated collection burden can be found in Section I.J. of the Special Analyses section later in this document.

The collection of information required by this proposed regulation is in proposed § 1.199A–4 and proposed § 1.199A–6. The collection of information in proposed § 1.199A–4 is required for taxpayers that choose to aggregate two or more trades or businesses. The collection of information in proposed § 1.199A–6 is required for passthrough entities that report section 199A information to their owners or beneficiaries. It is necessary to report the information to the IRS in order to ensure that taxpayers properly report in accordance with the rules of the proposed regulations the correct amount of deduction under section 199A. The collection of information is necessary to ensure tax compliance.

The likely respondents are individuals with qualified business income from more than one trade or business as well as most partnerships, S corporations, trusts, and estates that have qualified business income.

Estimated total annual reporting burden: 25 million hours.

Estimated average annual burden hours per respondent will vary from 30 minutes to 20 hours, depending on individual circumstances, with an estimated average of 2.5 hours.

Estimated number of respondents: 10 million.

Estimated annual frequency of responses: annually.

Estimated monetized burden: Using the IRS's taxpayer compliance cost estimates, taxpayers who are self-employed with multiple businesses are estimated to have a monetization rate of $39 per hour. Pass-throughs that issue K–1s have a monetization rate of $53 per hour. (See ''Taxpayer compliance Costs for Corporations and Partnerships: A New Look,'' Contos, et al. IRS Research Bulletin (2012) p. 5 for a description of the model.)

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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 section 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 199A and 643 of the Code.

I. Section 199A

Section 199A was enacted on December 22, 2017, by § 11011 of ''An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,'' Public Law 115–97 (TCJA), and was amended on March 23, 2018, retroactively to January 1, 2018, by § 101 of Division T of the Consolidated Appropriations Act, 2018, Public Law 115–141, (2018 Act). Section 199A applies to taxable years beginning after 2017 and before 2026.

Section 199A provides a deduction of up to 20 percent of income from a domestic business operated as a sole proprietorship or through a partnership, S corporation, trust, or estate (section 199A deduction). The section 199A deduction may be taken by individuals and by some estates and trusts. A section 199A deduction is not available for wage income or for business income earned through a C corporation. For taxpayers whose taxable income exceeds a statutorily-defined amount (threshold amount), section 199A may limit the taxpayer's section 199A deduction based on (i) the type of trade or business engaged in by the taxpayer, (ii) the amount of W–2 wages paid with respect to the trade or business (W–2 wages), and/or (iii) the unadjusted basis immediately after acquisition (UBIA) of qualified property held for use in the trade or business (UBIA of qualified property). These statutory limitations are subject to phase-in rules based upon taxable income above the threshold amount.

Section 199A also allows individuals and some trusts and estates (but not corporations) a deduction of up to 20 percent of their combined qualified real estate investment trust (REIT) dividends and qualified publicly traded partnership (PTP) income, including qualified REIT dividends and qualified PTP income earned through passthrough entities. This component of the section 199A deduction is not limited by W–2 wages or UBIA of qualified property.

The section 199A deduction is the lesser of (1) the sum of the combined amounts described in the prior two paragraphs or (2) an amount equal to 20 percent of the excess (if any) of taxable income of the taxpayer for the taxable year over the net capital gain of the taxpayer for the taxable year.

Additionally, section 199A(g) provides that specified agricultural or horticultural cooperatives may claim a special entity-level deduction that is substantially similar to the domestic production activities deduction under former section 199.

Finally, the statute expressly grants the Secretary authority to prescribe such regulations as are necessary to carry out the purposes of section 199A (section 199A(f)(4)), and provides specific grants of authority with respect to: The treatment of acquisitions, dispositions, and short-tax years (section 199A(b)(5)); certain payments to partners for services rendered in a non-partner capacity (section 199A(c)(4)(C)); the allocation of W–2 wages and UBIA of qualified property (section 199A(f)(1)(A)(iii)); restricting the allocation of items and wages under section 199A and such reporting requirements as the Secretary determines appropriate (section 199A(f)(4)(A)); the application of section 199A in the case of tiered entities (section 199A(f)(4)(B)); preventing the manipulation of the depreciable period of qualified property using transactions between related parties (section 199A(h)(1)); and determining the UBIA of qualified property acquired in like-kind exchanges or involuntary conversions (section 199A(h)(2)).

II. Section 643

Part I of subchapter J of chapter 1 of the Code provides rules related to the taxation of estates, trusts, and beneficiaries. For various subparts of part I of subchapter J, sections 643(a), 643(b), and 643(c) define the terms *distributable net income* (*DNI*), *income,* and *beneficiary,* respectively. Sections 643(d) through 643(i) (other than section 643(f)) provide additional rules. Section 643(f) grants the Secretary authority to treat two or more trusts as a single trust for purposes of subchapter J if (1) the trusts have substantially the same grantors and substantially the same primary beneficiaries and (2) a principal purpose of such trusts is the avoidance of the tax imposed by chapter 1 of the Code. Section 643(f) further provides that, for these purposes, spouses are treated as a single person.

Explanation of Provisions

The purpose of these proposed regulations is to provide taxpayers with computational, definitional, and anti-avoidance guidance regarding the application of section 199A. These proposed regulations contain six substantive sections, §§ 1.199A–1 through 1.199A–6, each of which provides rules relevant to the calculation of the section 199A deduction. Additionally, the proposed regulations would establish anti-abuse rules under section 643(f) to prevent taxpayers from establishing multiple non-grantor trusts or contributing additional capital to multiple existing non-grantor trusts in order to avoid Federal income tax, including abuse of section 199A. This Explanation of Provisions describes each of the proposed regulation sections in turn.

I. Proposed § 1.199A–1: Operational Rules

Section 1.199A–1 of the proposed regulations (proposed § 1.199A–1) provides guidance on the determination of the section 199A deduction. For simplicity, the proposed regulations use the term *individual* when referring to an individual, trust, estate, or other person eligible to claim the section 199A deduction. The term *relevant passthrough entity (RPE)* is used to describe passthrough entities that directly operate the trade or business or pass through the trade or business' items of income, gain, loss, or deduction from lower-tier RPEs to the individual.

Proposed § 1.199A–1(b) contains definitions applicable for section 199A and §§ 1.199A–1 through 1.199A–6. Proposed § 1.199A–1(c) provides guidance on the computation of the section 199A deduction for individuals with taxable income at or below the threshold amount. Proposed § 1.199A–1(d) provides guidance on the computation of the section 199A deduction for individuals with taxable income above the threshold amount, including individuals with taxable income within a phase-in range above the threshold amount. Proposed § 1.199A–1(e) provides special rules related to the section 199A deduction.

A. Defined Terms

Defined terms in proposed § 1.199A–1(b) include aggregated trade or business, applicable percentage, phase-in range, qualified business income (QBI), QBI component, qualified PTP income, qualified REIT dividends, reduction amount, RPE, specified service trade or business (SSTB), threshold amount, total QBI amount, UBIA of qualified property, and W–2 wages.

Proposed § 1.199A–1(b) also defines trade or business for purposes of section 199A and proposed §§ 1.199A–1 through 1.199A–6. Neither the statutory text of section 199A nor the legislative history provides a definition of trade or business for purposes of section 199A. Multiple commenters stated that section 162 is the most appropriate definition for purposes of section 199A. Although the term trade or business is defined in more than one provision of the Code, the Department of the Treasury (Treasury Department) and the IRS agree with commenters that for purposes of section 199A, section 162(a) provides the most appropriate definition of a trade or business. This is based on the fact that the definition of trade or business under section 162 is derived from a large body of existing case law and administrative guidance interpreting the meaning of trade or business in the context of a broad range of industries. Thus, the definition of a trade or business under section 162 provides for administrable rules that are appropriate for the purposes of section 199A and which taxpayers have experience applying and therefore defining trade or business as a section 162 trade or business will reduce compliance costs, burden, and administrative complexity.

The proposed regulations extend the definition of trade or business for purposes of section 199A beyond section 162 in one circumstance. Solely for purposes of section 199A, the rental or licensing of tangible or intangible property to a related trade or business is treated as a trade or business if the rental or licensing and the other trade or business are commonly controlled under proposed § 1.199A–4(b)(1)(i). It is not uncommon that for legal or other non-tax reasons taxpayers may segregate rental property from operating businesses. This rule allows taxpayers to aggregate their trades or businesses with the associated rental or intangible property under proposed § 1.199A–4 if all of the requirements of proposed § 1.199A–4 are met. In addition, this rule may prevent taxpayers from improperly allocating losses or deductions away from trades or businesses that generate income that is eligible for a section 199A deduction.

B. Computation of the Section 199A Deduction for Individuals With Taxable Income Below the Threshold Amount

1. Basic Computational Rules

An individual with income attributable to one or more domestic trades or businesses, other than as a result of owning stock of a C corporation or engaging in the trade or business of being an employee, and with taxable income (before computing the section 199A deduction) at or below the threshold amount, is entitled to a section 199A deduction equal to the lesser of (i) 20 percent of the QBI (generally defined as the net amount of qualified items of income, gain, deduction, and loss with respect to a qualified trade or business of the taxpayer) from the individual's trades or businesses plus 20 percent of the individual's combined qualified REIT dividends and qualified PTP income or (ii) 20 percent of the excess (if any) of the individual's taxable income over the individual's net capital gain. Proposed § 1.199A–1(c) contains guidance on calculating the amount of the deduction in these circumstances. If an individual's combined QBI is negative or combined qualified REIT dividends and PTP income is less than zero, proposed § 1.199A–1(c)(2) provides rules for the carryover of the losses.

2. Carryover Loss Rules for Negative Total QBI Amounts

If an individual has multiple trades or businesses, the individual must calculate the QBI from each trade or business and then net the amounts. Section 199A(c)(2) provides that, for purposes of section 199A, if the net QBI with respect to qualified trades or businesses of the taxpayer for any taxable year is less than zero, such amount shall be treated as a loss from a qualified trade or business in the succeeding taxable year. Proposed § 1.199A–1(c)(2)(i) repeats this rule and provides that the section 199A carryover rules do not affect the deductibility of the losses for purposes of other provisions of the Code.

3. Carryover Loss Rules if Combined Qualified REIT Dividends and Qualified PTP Income is Less Than Zero

One commenter stated it was not clear whether, if a taxpayer has an overall loss from combined qualified REIT dividends and qualified PTP income (because a loss from a PTP exceeds REIT dividends and PTP income), the negative amount should be netted against any net positive QBI (regardless of source), or whether the negative amount should be segregated and subject to its own loss carryforward rule distinct from but analogous to the QBI loss carryforward rule. Section 199A contemplates that qualified REIT dividends and qualified PTP income are computed and taken into account separately from QBI and should not affect QBI. If overall losses attributable to qualified REIT dividends and qualified PTP income were netted against QBI, these losses would affect QBI. Therefore, a separate loss carryforward rule is needed to segregate an overall loss attributable to qualified REIT dividends and qualified PTP income from QBI. Additionally, commenters have expressed concern that losses in excess of income could create a negative section 199A deduction, a result incompatible with the statute. Accordingly, proposed § 1.199A–1(c)(2)(ii) provides that if an individual has an overall loss after qualified REIT dividends and qualified PTP income are combined, the portion of the individual's section 199A deduction related to qualified REIT dividends and qualified PTP income is zero for the taxable year. In addition, the overall loss does not affect the amount of the taxpayer's QBI. Instead, such overall loss is carried forward and must be used to offset combined qualified REIT dividends and qualified PTP income in the succeeding taxable year or years for purposes of section 199A.

C. Computation of the Section 199A Deduction for Individuals With Taxable Income Above the Threshold Amount

Proposed § 1.199A–1(d) addresses the calculation of the section 199A deduction for individuals with taxable income above the threshold amount. All of the rules relating to the REIT/PTP component of the section 199A deduction applicable to individuals with taxable income at or below the threshold amount also apply to individuals with taxable income above the threshold amount. The QBI component of the section 199A deduction, however, is subject to limitations for individuals with taxable income exceeding the threshold amount. These limitations include the exclusion or reduction of items from an SSTB and limitations based on the W–2 wages of the trade or business or a combination of the W–2 wages and the UBIA of qualified property. Proposed § 1.199A–1(d) provides guidance on the application of these limitations.

Proposed § 1.199A–1(d)(2)(i) addresses the limitation or exclusion from QBI for SSTBs. SSTBs are specified service trades or businesses as defined in section 199A(d)(2) and proposed § 1.199A–5 (see part V. of the Explanation of Provisions). If an individual's taxable income is above the threshold amount but within the phase-in range then the individual must calculate an applicable percentage that limits the QBI, W–2 wages, and UBIA of qualified property from an SSTB that are used to calculate the individual's section 199A deduction. If the individual's taxable income is above the phase-in range, then no amount of QBI, W–2 wages, or UBIA of qualified property from an SSTB can be used by the individual in calculating the individual's section 199A deduction.

Proposed § 1.199A–1(d)(iv) addresses the limitations on QBI based on W–2 wages and UBIA of qualified property. An individual must determine the W–2 wages and the UBIA of qualified property attributable to each trade or business contributing to the individual's combined QBI under the rules of proposed § 1.199A–2. The W–2 wages and UBIA of qualified property amounts are compared to QBI in order to determine an individual's QBI component for each trade or business.

After determining the QBI for each trade or business, the individual must compare 20 percent of that trade or business' QBI to the alternative limitations for that trade or business. The limitation to which the 20 percent of QBI is compared is the greater of 50 percent of the W–2 wages attributable to the trade or business or 25 percent of those W–2 wages plus 2.5 percent of the UBIA of qualified property for that trade or business. If 20 percent of the QBI of the trade or business is greater than the relevant alternative limitation, the QBI component is limited in the calculations under the proposed regulations to the amount of the alternative limitation. If an individual's taxable income is within the phase-in range and 20 percent of QBI is greater than either of the limitation amounts, the individual's QBI component for the trade or business is instead equal to 20 percent of QBI reduced by the reduction amount as described in proposed § 1.199A–1(d)(iv)(B).

One commenter noted that, if combined QBI from all of an individual's trades or businesses is greater than zero, but the individual's QBI from one or more trades or businesses is less than zero, the mechanics of how the loss should be offset against the QBI income for purposes of calculating the section 199A deduction are unclear. How such a loss is allocated matters in situations in which an individual has taxable income above the threshold amount and more than one trade or business with positive QBI. The commenter suggested that a ''netting'' approach best reflects Congress's intent, and that the absence of a netting approach would lead to inconsistent and counterintuitive results that Congress did not intend. The Treasury Department and the IRS agree that a netting approach is contemplated by the carryforward rule of section 199A(c)(2) and is necessary to ensure results consistent with the intent of section 199A. Accordingly, proposed § 1.199A–1(d)(iii) provides that, if an individual has QBI of less than zero from one trade or business, but has overall QBI greater than zero when all of the individual's trades or businesses are taken together, then the individual must offset the net income in each trade or business that produced net income with the net loss from each trade or business that produced net loss before the individual applies the limitations based on W–2 wages and UBIA of qualified property. The individual must apportion the net loss among the trades or businesses with positive QBI in proportion to the relative amounts of QBI in such trades or businesses. Then, for purposes of applying the limitation based on W–2 wages and UBIA of qualified property, the net gain or income with respect to each trade or business (as offset by the apportioned losses) is the taxpayer's QBI with respect to that trade or business. The W–2 wages and UBIA of qualified property from the trades or businesses which produced negative QBI are not taken into account for purposes of proposed § 1.199A–1(d) and are not carried over into the subsequent year. The Treasury Department and the IRS request comments on the approach described above.

D. Special Rules

Proposed § 1.199A–1(e) incorporates special rules contained in sections 199A and 6662. Section 199A(f)(1) provides that in the case of a partnership or S corporation, section 199A is applied at the partner or shareholder level. The proposed regulations provide that the section 199A deduction has no effect on the adjusted basis of the partner's interest in the partnership. With respect to S corporations, the section 199A deduction has no effect on the adjusted basis of a shareholder's stock in an S corporation or the S corporation's accumulated adjustments account.

The proposed regulations provide that the deduction under section 199A does not reduce net earnings from self-employment under section 1402 or net investment income under section 1411. Therefore, both sections 1402 and 1411 are calculated as though there is no section 199A deduction.

Section 199A(f)(1)(C) provides that if in the case of a taxpayer with QBI from within the Commonwealth of Puerto Rico, if such income is taxable under section 1 for a taxable year, then for purposes of determining QBI of such individual for such taxable year, the term ''United States'' shall include the Commonwealth of Puerto Rico. Proposed § 1.199A–1(e)(3) repeats this statutory language.

Section 199A(f)(2) provides that for purposes of determining alternative minimum taxable income under section 55, QBI shall be determined without regard to any adjustments under sections 56 through 59. To clarify that the section 199A deduction does not result in individuals being subject to the alternative minimum tax, proposed § 1.199A–1(e)(4) provides that, for purposes of determining alternative minimum taxable income under section 55, the deduction allowed under section 199A(a) for a taxable year shall be equal in amount to the deduction allowed under section 199(A)(a) in determining taxable income for that taxable year.

Section 6662(a) provides a penalty for an underpayment of tax required to be shown on a return. Under section 6662(b)(2), the penalty applies to the portion of any underpayment that is attributable to a substantial understatement of income tax. Section 6662(d)(1) defines substantial understatement of income tax, which is generally an understatement that exceeds the greater of 10 percent of the tax required to be shown on the return or $5,000. Section 6662(d)(1)(C) provides a special rule in the case of any taxpayer who claims the deduction allowed under section 199A for the taxable year, which requires that section 6662(d)(1)(A) is applied by substituting ''5 percent'' for ''10 percent.'' Proposed § 1.199A–1(e)(5) cross-references this rule.

Section 199A(b)(7) provides that in the case of any qualified trade or business of a patron of a specified agricultural or horticultural cooperative, the amount determined under section 199A(b)(2) with respect to such trade or business shall be reduced by the lesser of (A) 9 percent of so much of the qualified business income with respect to such trade or business as is properly allocable to qualified payments received from such cooperative, or (B) 50 percent of so much of the W–2 wages with respect to such trade or business as are so allocable. Proposed § 1.199A–1(e)(6) repeats this statutory language.

II. Proposed § 1.199A–2: Determination of W–2 Wages and the UBIA of Qualified Property

As described in part I.C. of this Explanation of Provisions, if an individual's taxable income exceeds the threshold amount, section 199A(b)(2)(B) imposes a limit on the section 199A deduction based on the greater of either (i) the W–2 wages paid, or (ii) the W–2 wages paid and UBIA of qualified property attributable to a trade or business. This part of this Explanation of Provisions describes the rules in proposed § 1.199A–2 regarding the determination of W–2 wages and UBIA of qualified property.

A. W–2 Wages Attributable to a Trade or Business

The W–2 wage rules of proposed § 1.199A–2 generally follow the rules under former section 199. Section 199, which was repealed by the TCJA, provided for a deduction with respect to certain domestic production activities and contained a W–2 wage limitation similar to the one in section 199A. The legislative text of the W–2 wage limitation in section 199A is modeled on the text of former section 199, and both taxpayers and the IRS have developed experience in applying those W–2 wage rules for over a decade. The regulations under former section 199 provided rules to determine W–2 wages, which provide a useful starting point in developing the W–2 wage rules under section 199A, including rules on the definition of W–2 wages, wages paid by persons other than the common-law employer, and methods for calculating W–2 wages.

The Treasury Department and the IRS have received comments concerning whether amounts paid to workers who receive Forms W–2 from third party payors (such as professional employer organizations, certified professional employer organizations, or agents under section 3504) that pay these wages to workers on behalf of their clients and report wages on Forms W–2, with the third party payor as the employer listed in Box c of the Forms W–2, may be included in the W–2 wages of the clients of third party payors. In order for wages reported on a Form W–2 to be included in the determination of W–2 wages of a taxpayer, the Form W–2 must be for employment by the taxpayer. The regulations under former section 199, specifically § 1.199–2(a)(2), addressed this issue, providing that, since employees of the taxpayer are defined in the regulations as including only common law employees of the taxpayer and officers of a corporate taxpayer, taxpayers may take into account wages reported on Forms W–2 issued by other parties provided that the wages reported on the Forms W–2 were paid to employees of the taxpayer for employment by the taxpayer.

Proposed § 1.199A–2(b)(2)(ii) provides a rule for wages paid by a person other than the common law employer that is substantially similar to the rule in § 1.199–2(a)(2). Specifically, the proposed regulations provide that, in determining W–2 wages, a person may take into account any W–2 wages paid by another person and reported by the other person on Forms W–2 with the other person as the employer listed in Box c of the Forms W–2, provided that the W–2 wages were paid to common law employees or officers of the person for employment by the person. In such cases, the person paying the W–2 wages and reporting the W–2 wages on Forms W–2 is precluded from taking into account such wages for purposes of determining W–2 wages with respect to that person. Persons that pay and report W–2 wages on behalf of or with respect to others can include certified professional employer organizations under section 7705, statutory employers under section 3401(d)(1), and agents under section 3504. Under this rule, persons who otherwise qualify for the deduction under section 199A are not limited in applying the deduction merely because they use a third party payor to pay and report wages to their employees. However, with respect to individuals who taxpayers assert are their common law employees for purposes of section 199A, taxpayers are reminded of their duty to file returns and apply the tax law on a consistent basis.

Unlike former section 199, the W–2 wage limitation in section 199A applies separately for each trade or business. Accordingly, proposed § 1.199A–2 provides that, in the case of W–2 wages that are allocable to more than one trade or business, the portion of the W–2 wages allocable to each trade or business is determined to be in the same proportion to total W–2 wages as the deductions associated with those wages are allocated among the particular trades or businesses. Section 199A(b)(4) also requires that to be taken into account, W–2 wages must be properly allocable to QBI. W–2 wages are properly allocable to QBI if the associated wage expense is taken into account in computing QBI.

Additionally, proposed § 1.199A–2(b)(4) restates the rule of section 199A(f)(1)(A)(iii), which provides that, in the case of a trade or business conducted by an RPE, a partner's or shareholder's allocable share of wages must be determined in the same manner as the partner's allocable share or a shareholder's pro rata share of wage expenses.

Consistent with section 199A(b)(5) and the legislative history of the TCJA, which direct the Secretary to provide rules for applying the W–2 wage limitation in cases in which the taxpayer acquires, or disposes of, a trade or business, the major portion of a trade or business, or the major portion of a separate unit of a trade or business during the year, proposed § 1.199A–2(b)(2)(iv)(B) provides rules that apply in the case of an acquisition or disposition of a trade or business. See Joint Explanatory Statement of the Committee of Conference, 38. Specifically, proposed § 1.199A–2(b)(2)(iv)(B)(*1*) provides that, in the case of an acquisition or disposition of a trade or business, the major portion of a trade or business, or the major portion of a separate unit of a trade or business that causes more than one individual or entity to be an employer of the employees of the acquired or disposed of trade or business during the calendar year, the W–2 wages of the individual or entity for the calendar year of the acquisition or disposition are allocated between each individual or entity based on the period during which the employees of the acquired or disposed of trade or business were employed by the individual or entity, regardless of which permissible method is used for reporting predecessor and successor wages on Form W–2. For this purpose, the period of employment is determined consistently with the principles for determining whether an individual is an employee described in proposed § 1.199A–2(b).

A notice of proposed revenue procedure, Notice 2018–64, 2018–35 IRB ____, which provides three methods for calculating W–2 wages is being issued concurrently with this notice of proposed rulemaking. The three methods in the notice are substantially similar to the methods provided in Rev. Proc. 2006–47, 2006–2 C.B. 869, for purposes of calculating ''paragraph (e)(1) wages'' (that is, wages described in § 1.199–2(e)(1) issued under former section 199). The first method (the unmodified Box method) allows for a simplified calculation while the second and third methods (the modified Box 1 method and the tracking wages method) provide for greater accuracy.

B. The UBIA of Qualified Property

Section 199A(b)(2)(B)(ii) provides an alternative deduction limitation based on 25 percent of W–2 Wages with respect to the qualified trade or business and 2.5 percent of the UBIA of qualified property. Proposed § 1.199A–2 restates the statutory definitions under the qualified property rules, and provides additional guidance.

1. General Definition of UBIA of Qualified Property

Proposed § 1.199A–2(c)(1) restates the definition of qualified property in section 199A(b)(6)(A), which provides that ''qualified property'' means tangible property of a character subject to depreciation that is held by, and available for use in, a trade or business at the close of the taxable year, and which is used in the production of QBI, and for which the depreciable period has not ended before the close of the taxable year. Proposed § 1.199A–2(c)(2) also restates the definition of depreciable period in section 199A(b)(6)(B), which provides that ''depreciable'' period means the period beginning on the date the property is first placed in service by the taxpayer and ending on the later of (a) the date 10 years after that date, or (b) the last day of the last full year in the applicable recovery period that would apply to the property under section 168(c), regardless of the application of section 168(g).

Because the applicable recovery period under section 168(c) of the property is not changed by any additional first-year depreciation deduction allowable under section 168, proposed § 1.199A–2(c)(2)(ii) also clarifies that the additional first-year depreciation deduction allowable under section 168 (for example, under section 168(k) or section 168(m)) does not affect the applicable recovery period under section 168(c).

Proposed § 1.199A–2(c)(3) provides a definition of UBIA. The Treasury Department and the IRS believe that existing general principles used to define ''unadjusted basis'' in § 1.263(a)–3(h)(5) provide a reasonable basis for an administrable rule that is appropriate for the purposes of section 199A and that their use will reduce compliance costs, burden, and administrative complexity because taxpayers have experience applying them. In addition, the Treasury Department and the IRS believe that ''immediately after acquisition'' means as of the date the property is placed in service because section 199A provides that ''qualified property'' must be used in the production of QBI. In order to be used in the production of QBI, the qualified property necessarily must be placed in service. Determining UBIA as of the date the property is placed in service ensures consistency between purchased and produced qualified property, and reduces compliance costs, burden, and administrative complexity because taxpayers are already required to determine that amount. Accordingly, proposed § 1.199A–2 provides that the term ''UBIA'' means the basis as determined under section 1012 or other applicable sections of chapter 1, including subchapter O (relating to gain or loss on dispositions of property), subchapter C (relating to corporate distributions and adjustments), subchapter K (relating to partners and partnerships), and subchapter P (relating to capital gains and losses). UBIA is determined without regard to any adjustments described in section 1016(a)(2) or (3), any adjustments for tax credits claimed by the taxpayer (for example, under section 50(c)), or any adjustments for any portion of the basis for which the taxpayer has elected to treat as an expense (for example, under sections 179, 179B, or 179C). Therefore, for purchased or produced qualified property, UBIA generally will be its cost under section 1012 as of the date the property is placed in service. For qualified property contributed to a partnership in a section 721 transaction and immediately placed in service, UBIA generally will be its basis under section 723. For qualified property contributed to an S corporation in a section 351 transaction and immediately placed in service, UBIA generally will be its basis under section 362. Further, for property inherited from a decedent and immediately placed in service by the heir, the UBIA generally will be its fair market value at the time of the decedent's death under section 1014. However, proposed § 1.199A–2(c)(3) provides that UBIA does reflect the reduction in basis for the percentage of the taxpayer's use of property for the taxable year other than in the taxpayer's trade or business.

2. Partnership Special Basis Adjustments

After the enactment of the TCJA, the Treasury Department and the IRS received comments requesting guidance as to whether partnership special basis adjustments under sections 734(b) or 743(b) constitute qualified property for purposes of section 199A. Treating partnership special basis adjustments as qualified property could result in inappropriate duplication of UBIA of qualified property (if, for example, the fair market value of the property has not increased and its depreciable period has not ended). Accordingly, proposed § 1.199A–2(c)(1)(iii) provides that partnership special basis adjustments are not treated as separate qualified property.

3. Property Transferred With a Principal Purpose of Increasing Section 199A Deduction

Qualified property includes depreciable property used during the taxable year in the production of QBI and held by, and available for use in, the trade or business at the close of the taxable year. However, it would be inconsistent with the purposes of section 199A to permit trades or businesses to transfer or acquire property at the end of the year merely to manipulate the UBIA of qualified property attributable to the trade or business. Therefore, pursuant to the authority granted to the Secretary under section 199A(f)(4), proposed § 1.199A–2(c)(1)(iv) provides that property is not qualified property if the property is acquired within 60 days of the end of the taxable year and disposed of within 120 days without having been used in a trade or business for at least 45 days prior to disposition, unless the taxpayer demonstrates that the principal purpose of the acquisition and disposition was a purpose other than increasing the section 199A deduction.

4. Like-Kind Exchanges and Involuntary Conversions

Section 199A does not provide rules to determine UBIA for qualified property in the case of an exchange of property under section 1031 (like-kind exchange) or involuntary conversion under section 1033. However, section 199A(h)(2) specifically instructs the Secretary to do so. The Treasury Department and the IRS believe that existing general principles used for like-kind exchanges and involuntary conversions under § 1.168(i)–(6) provide a useful analogy for administrable rules that are appropriate for the purposes of section 199A and that their use will reduce compliance costs, burden, and administrative complexity because taxpayers have experience applying them. Accordingly, proposed § 1.199A–2(c)(2)(iii) generally follows the rules of § 1.168(i)–6 to provide that qualified property that is acquired in a like-kind exchange, as defined in § 1.168(i)–6(b)(11), or in an involuntary conversion, as defined in § 1.168(i)–6(b)(12), is treated as replacement Modified Accelerated Cost Recovery System (MACRS) property as defined in § 1.168(i)–6(b)(1) whose depreciable period generally is determined as of the date the relinquished property was first placed in service. Accordingly, subject to one exception, proposed § 1.199A–2(c)(2)(iii) provides that, for purposes of determining the depreciable period, the date the exchanged basis in the replacement qualified property is first placed in service by the trade or business is the date on which the relinquished property was first placed in service by the individual or RPE and the date the excess basis in the replacement qualified property is first placed in service by the individual or RPE is the date on which the replacement qualified property was first placed in service by the individual or RPE. As a result, the depreciable period under section 199A for the exchanged basis of the replacement qualified property will end before the depreciable period for the excess basis of the replacement qualified property ends.

The exception is that proposed § 1.199A–2(c)(2)(iii)(C) provides that, for purposes of determining the depreciable period, if the individual or RPE makes an election under § 1.168(i)–6(i)(1) (the election not to apply § 1.168(i)–6)), the date the exchanged basis and excess basis in the replacement qualified property are first placed in service by the trade or business is the date on which the replacement qualified property is first placed in service by the individual or RPE, with UBIA determined as of that date. In this case, the depreciable periods under section 199A for the exchanged basis and the excess basis of the replacement qualified property will end on the same date.

Thus, unless the exception applies, qualified property acquired in a like-kind exchange or involuntary conversion will have two separate placed in service dates under the proposed regulations: For purposes of determining the UBIA of the property, the relevant placed in service date will be the date the acquired property is actually placed in service; for purposes of determining the depreciable period of the property, the relevant placed in service date generally will be the date the relinquished property was first placed in service. The proposed regulations contain an example illustrating these rules.

5. Other Nonrecognition Transactions

The Treasury Department and the IRS have received comments requesting guidance on the application of the qualified property rules to nonrecognition transfers involving transferred basis property within the meaning of section 7701(a)(43) (transferred basis transactions). For example, taxpayers and practitioners requested guidance on how to determine the depreciable period of the property if a partnership conducts a trade or business and qualified property is contributed to that trade or business in a nonrecognition transfer under section 721(a). Also of relevance in the context of non-recognition transfers, section 199A(h)(1) grants the Secretary anti-abuse authority to apply rules similar to the rules under section 179(d)(2) (which can restrict the expensing of certain assets in transferred basis transactions) to prevent the manipulation of the depreciable period of qualified property using transactions between related parties.

The Treasury Department and the IRS believe that existing general principles used for transferred basis transactions under § 168(i)(7) provide a useful analogy for administrable rules that are appropriate for the purposes of section 199A and that their use will reduce compliance costs, burden, and administrative complexity because taxpayers have experience applying them. Accordingly, proposed § 1.199A–2(c)(2)(iv) provides that, for purposes of determining the depreciable period, if an individual or RPE (the transferee) acquires qualified property in a transaction described in section 168(i)(7)(B), the transferee determines the date on which the qualified property was first placed in service using a two-step approach. First, for the portion of the transferee's UBIA of the qualified property that does not exceed the transferor's UBIA of such property, the date such portion was first placed in service by the transferee is the date on which the transferor first placed the qualified property in service. Second, for the portion of the transferee's UBIA of the qualified property that exceeds the transferor's UBIA of such property, if any, such portion is treated as separate qualified property that the transferee first placed in service on the date of the transfer. Thus, qualified property acquired in these non-recognition transactions will have two separate placed in service dates under the proposed regulations: For purposes of determining the UBIA of the property, the relevant placed in service date will be the date the acquired property is placed in service by the transferee (for instance, the date the partnership places in service property received in a section 721 transaction); for purposes of determining the depreciable period of the property, the relevant placed in service date generally will be the date the transferor first placed the property in service (for instance, the date the partner placed the property in service in his or her sole proprietorship). The proposed regulations contain an example illustrating these rules.

The Treasury Department and the IRS request comments concerning appropriate methods for accounting for non-recognition transactions, including rules to prevent the manipulation of the depreciable period of qualified property using transactions between related parties.

6. Redetermination of UBIA and Subsequent Improvements to Qualified Property

The Treasury Department and the IRS have received comments requesting guidance on the treatment of subsequent improvements to qualified property. Subsequent improvements to qualified property are generally treated as a separate item of property under section 168(i)(6). The Treasury Department and the IRS do not believe a different approach is necessary for purposes of section 199A. Accordingly, proposed § 1.199A–2(c)(1)(ii) provides that, in the case of any addition to, or improvement of, qualified property that is already placed in service by the taxpayer, such addition or improvement is treated as separate qualified property that the taxpayer first placed in service on the date such addition or improvement is placed in service by the taxpayer for purposes of determining the depreciable period of the qualified property. For example, if a taxpayer acquired and placed in service a machine on March 26, 2018, and then incurs additional capital expenditures to improve the machine in May 2020, and places such improvements in service on May 27, 2020, the taxpayer has two qualified properties: The machine acquired and placed in service on March 26, 2018, and the improvements to the machine incurred in May 2020 and placed in service on May 27, 2020.

7. Allocation of UBIA of Qualified Property by RPEs

In the case of a trade or business conducted by an RPE, section 199A(f) provides that a partner's or shareholder's allocable share of the UBIA of qualified property is determined in the same manner as the partner's allocable share or shareholder's pro rata share of depreciation. Proposed § 1.199A–2(a)(3) provides that, in the case of qualified property held by an RPE, each partner's or shareholder's share of the UBIA of qualified property is an amount that bears the same proportion to the total UBIA of qualified property as the partner's or shareholder's share of tax depreciation bears to the entity's total tax depreciation attributable to the property for the year. In the case of qualified property of a partnership that does not produce tax depreciation during the year (for example, property that has been held for less than 10 years but whose recovery period has ended), each partner's share of the UBIA of qualified property is based on how gain would be allocated to the partners pursuant to sections 704(b) and 704(c) if the qualified property were sold in a hypothetical transaction for cash equal to the fair market value of the qualified property. In the case of qualified property of an S corporation that does not produce tax depreciation during the year, each shareholder's share of the UBIA of the qualified property is a share of the UBIA proportionate to the ratio of shares in the S corporation held by the shareholder over the total shares of the S corporation.

III. Proposed § 1.199A–3: QBI, Qualified REIT Dividends, Qualified PTP Income

Proposed § 1.199A–3 restates the definitions in section 199A(c) and provides additional guidance on the determination of QBI, qualified REIT dividends, and qualified PTP income.

A. QBI

Section 199A(c)(1) provides that the term ''QBI'' means, for any taxable year, the net amount of qualified items of income, gain, deduction, and loss attributable to any qualified trade or business of the taxpayer. QBI does not include any qualified REIT dividends or qualified PTP income. Section 199A(c)(3)(A) provides that the term ''qualified items of income, gain, deduction, and loss'' means items of income, gain, deduction, and loss to the extent such items are (i) effectively connected with the conduct of a trade or business within the United States (within the meaning of section 864(c), determined by substituting ''qualified trade or business (within the meaning of section 199A)'' for ''nonresident alien individual or a foreign corporation'' or for ''a foreign corporation'' each place it appears), and (ii) included or allowed in determining taxable income for the taxable year. Section 199A(c)(3)(B) provides a list of items that are not taken into account as qualified items of income, gain, deduction, and loss, including capital gain or loss, dividends, interest income other than interest income properly allocable to a trade or business, amounts received from an annuity other than in connection with a trade or business, certain items described in section 954, and items of deduction or loss properly allocable to these items. Section 199A(c)(4) provides that QBI does not include reasonable compensation paid to the taxpayer by any qualified trade or business of the taxpayer for services rendered with respect to the trade or business, any guaranteed payment described in section 707(c) paid to a partner for services rendered with respect to the trade or business, and to the extent provided in regulations, any payment described in section 707(a) to a partner for services rendered with respect to the trade or business.

i. Treatment of Section 751 Gain

The Treasury Department and the IRS have received comments stating that it is unclear whether gain or loss that is treated as ordinary income under section 751 should be QBI if the section 751 income meets all of the other requirements to be QBI. This uncertainty is caused because section 199A(e)(5) lists: (i) The taxpayer's allocable share of the QBI from a publicly traded partnership and (ii) income described in section 751(a) as separate categories of *qualified publicly traded partnership income,* which could be read to imply that income described in section 751 is not QBI. Section 1.199–5(f), issued under former section 199, specifically included section 751(a) or (b) gains as *domestic production gross receipts.*

The Treasury Department and the IRS do not view the statutory reference to section 751(a) gain as qualified PTP income to exclude section 751 gain from being QBI, but rather view such reference as clarifying the rules for PTPs. Accordingly, proposed § 1.199A–3(b)(1)(i) clarifies that any gain attributable to assets of a partnership giving rise to ordinary income under section 751(a) or (b) is considered attributable to the trades or businesses conducted by the partnership, and therefore, may constitute QBI if the other requirements of section 199A and proposed § 1.199A–3 are satisfied.

ii. Guaranteed Payments for the Use of Capital

Because guaranteed payments for the use of capital under section 707(c) are determined without regard to the income of the partnership, proposed § 1.199A–3(b)(1)(ii) provides that such payments are not considered attributable to a trade or business, and thus do not constitute QBI. However, the partnership's related expense for making the guaranteed payments may constitute QBI if the other requirements are satisfied.

iii. Section 481 Adjustments

Section 1.199–8(g), issued under former section 199, provides rules on how section 481(a) adjustments are taken into account for purposes of former section 199. Similarly, proposed § 1.199A–3(b)(1)(iii) provides that section 481 adjustments attributable to a trade or business, whether positive or negative, and arising in a taxable year ending after December 31, 2017, are treated as attributable to that trade or business. Accordingly, such section 481 adjustments will constitute QBI to the extent the requirements of section 199A, including proposed § 1.199A–3, are satisfied. Section 481 adjustments arising in a taxable year ending before January 1, 2018, do not constitute QBI.

iv. Previously Suspended Losses

Several sections of the Code, including sections 465, 469, 704(d), and 1366(d), provide for disallowance of losses and deductions in certain cases. Generally, the disallowed amounts are suspended and carried forward to the following year, at which point they are re-tested and may become allowable. Proposed § 1.199A–3(b)(1)(iv) provides that, to the extent that any previously disallowed losses or deductions are allowed in the taxable year, they are treated as items attributable to the trade or business. However, losses or deductions that were disallowed for taxable years beginning before January 1, 2018, are not taken into account for purposes of computing QBI in a later taxable year.

v. Net Operating Losses

Generally, items giving rise to a net operating loss are allowed in computing taxable income in the year incurred. Because those items would have been taken into account in computing QBI in the year incurred, the net operating loss should not be treated as QBI in subsequent years. Otherwise, the same loss could be taken into account in multiple tax years. However, losses disallowed by section 461(l) give rise to a net operating loss without ever having been allowable in computing taxable income. Thus, if deductions are disallowed by reason of 461(l), those disallowed deductions will not be included in the QBI computation in the year incurred (because they are not includable in taxable income), and, if the resulting net operating loss also is not included in the QBI computation, the deduction would permanently escape the QBI rules. This result would be inappropriate. Accordingly, proposed § 1.199A–3(b)(1)(v) provides that generally, a deduction under section 172 for a net operating loss is not considered attributable to a trade or business and therefore, is not taken into account in computing QBI. However, to the extent the net operating loss is comprised of amounts attributable to a trade or business that were disallowed under section 461(l), the net operating loss is considered attributable to that trade or business, and will constitute QBI to the extent the requirements of section 199A, including proposed § 1.199A–3, are satisfied.

The Treasury Department and the IRS request comments regarding the interaction of section 199A and 461(l) generally.

vi. Requirement That an Item Be Effectively Connected With a U.S. Trade or Business

Section 199A applies to all noncorporate taxpayers, whether such taxpayers are domestic or foreign. Accordingly, section 199A applies to both U.S. citizens and resident aliens as well as nonresident aliens that have QBI. As noted previously in this Explanation of Provisions, QBI includes items of income, gain, deduction, and loss to the extent such items are (i) included or allowed in determining taxable income for the taxable year and (ii) effectively connected with the conduct of a trade or business within the United States (within the meaning of section 864(c), determined by substituting ''qualified trade or business (within the meaning of section 199A)'' for ''nonresident alien individual or a foreign corporation'' or for ''a foreign corporation'' each place it appears).

a. Summary of Rules for Generally Determining Whether Income Is Effectively Connected With a United States Trade or Business

Section 864(c) provides rules that nonresident alien individuals and foreign corporations use to determine which items of income, gain, or loss are effectively connected with a United States trade or business. Section 873(a) permits nonresident aliens to deduct expenses only if and to the extent that they are connected with, or properly allocable and apportioned to, income effectively connected with a United States trade or business.

Thus, for example, a U.S. partner of a partnership that operates a trade or business in both the United States and in a foreign country would only include the items of income, gain, deductions, and loss that would be effectively connected with a United States trade or business. Similarly, a shareholder of an S corporation that is engaged in a trade or business in both the United States and in a foreign country would only take into account the items of income, gain, deduction, and loss that would be effectively connected to the portion of the business conducted by the S corporation in the United States, determined by applying the principles of section 864(c).

In general, whether a nonresident alien is engaged in a trade or business within the United States, as opposed to a trade or business conducted solely outside the United States, is based upon the all the facts and circumstances, as developed through case law and other published guidance. Pursuant to section 875(1), a nonresident alien is considered engaged in a trade or business within the United States if the partnership of which such individual is a member is so engaged.

Section 864(b) provides that the term ''trade or business within the United States'' includes (but is not limited to) the performance of personal services within the United States at any time during the taxable year, but excludes the performance of services described in section 864(b)(1) and (2). Section 864(b)(1) covers a limited set of nonresident aliens who perform services in the United States on behalf of foreign persons not otherwise engaged in a U.S. trade or business, or on behalf of U.S. persons through a foreign office, if the nonresident aliens are present in the United States less than 90 days during the taxable year and their compensation does not exceed $3,000. Section 864(b)(2) generally treats foreign persons, including partnerships, who are trading in stocks, securities, and in commodities for their own account or through a broker or other independent agent as not engaged in a United States trade or business.

b. Application to Section 199A

Although the cross reference in section 199A(c)(3)(A)(i) to section 864 is limited to paragraph (c) of that section, no income derived from excluded services under section 864(b)(1) or (2) could ever be effectively connected income in the hands of a nonresident alien. Accordingly, section 199A incorporates the specific rules regarding the scope of the term ''trade or business in the United States'' in determining QBI. As such, if a trade or business is not engaged in a U.S. trade or business by reason of section 864(b), items of income, gain, deduction, or loss from that trade or business will not be included in QBI because such items would not be effectively connected with the conduct of a U.S. trade or business.

If a trade or business is determined to be conducted in the United States, section 864(c)(3) generally treats all income of a nonresident alien from sources within the United States as effectively connected with the conduct of a U.S. trade or business. However, any income from sources within the United States described in section 871(a)(1) or (h) and any gain or loss from the sale of capital assets are only effectively connected if the income meets requirements of section 864(c)(2) and the regulations thereunder. Under section 864(c)(4), income from sources without the United States is generally not treated as effectively connected with the conduct of a U.S. trade or business unless an exception under section 864(c)(4)(B) applies. Thus, a trade or business's foreign source income, gain, or loss, (and any deductions effectively connected with such foreign source income, gain, or loss) would generally not be included in QBI, unless the income meets an exception in section 864(c)(4)(B). Whether income is U.S. or foreign sourced is determined under sections 861, 862, 863, and 865, and the regulations thereunder.

This rule does not mean that any item that is effectively connected with the conduct of a trade or business with the United States is therefore QBI. As discussed previously, the item must also be ''with respect to'' a trade or business. Certain provisions of the Code allow items to be treated as effectively connected, even though they are not with respect to a trade or business. For example, section 871(d) allows a nonresident alien individual to elect to treat income from real property in the United States that would not otherwise be treated as effectively connected with the conduct of a trade or business within the United Sates as effectively connected. However, for purposes of section 199A, if items are not attributable to a trade or business under 162, such items do not constitute QBI.

Similarly, the fact that a deduction is allowed for purposes of computing effectively connected taxable income does not necessarily mean that it is taken into account for purposes of section 199A. For example, for purposes of computing effectively connected taxable income, section 873(b) allows certain deductions, including for theft losses of property located within the United States and charitable contributions allowed under section 170, to be taken into account regardless of whether they are connected with income that is effectively connected with the conduct of a trade or business within the United States. However, for purposes of section 199A, these items would not be taken into account because section 199A only permits a deduction for income that is both attributable to a trade or business and that is also effectively connected income.

vii. Exclusion From QBI for Certain Items

a. Treatment of Section 1231 Gains and Losses

Section 199A(c)(3)(B)(i) provides that QBI does not include any item of short-term capital gain, short-term capital loss, long-term capital gain, or long-term capital loss. The Treasury Department and the IRS have received comments requesting guidance on the extent to which gains and losses subject to section 1231 may be taken into account in calculating QBI. Section 1231 provides rules under which gains and losses from certain involuntary conversions and the sale of certain property used in a trade or business are either treated as long-term capital gains or long-term capital losses, or not treated as gains and losses from sales or exchanges of capital assets.

Section 199A(c)(3)(B)(i) excludes capital gains or losses, regardless of whether those items arise from the sale or exchange of a capital asset. The legislative history of section 199A provides that QBI does not include any item taken into account in determining net long-term capital gain or net long-term capital loss. Conference Report page 30. Accordingly, proposed § 1.199A–3(b)(2)(ii)(A) clarifies that, to the extent gain or loss is treated as capital gain or loss, it is not included in QBI. Specifically, if gain or loss is treated as capital gain or loss under section 1231, it is not QBI. Conversely, if section 1231 provides that gains or losses are not treated as gains and losses from sales or exchanges of capital assets, section 199A(c)(3)(B)(i) does not apply and thus, the gains or losses must be included in QBI (provided all other requirements are met).

b. Interest Income

Section 199A(c)(4)(C) provides that QBI does not include any interest income other than interest income that is properly allocable to a trade or business. The Treasury Department and the IRS believe that interest income received on working capital, reserves, and similar accounts is not properly allocable to a trade or business, and therefore should not be included in QBI, because such interest income, although held by a trade or business, is simply income from assets held for investment. Accordingly, proposed § 1.199A–3(b)(2)(ii)(C) provides that interest income received on working capital, reserves, and similar accounts is not properly allocable to a trade or business. In contrast, interest income received on accounts or notes receivable for services or goods provided by the trade or business is not income from assets held for investment, but income received on assets acquired in the ordinary course of trade or business.

c. Reasonable Compensation

Section 199A(c)(4)(A) provides that QBI does not include ''reasonable compensation paid to the taxpayer by any qualified trade or business of the taxpayer for services rendered with respect to the trade or business.'' Similarly, guaranteed payments for services under section 707(c) are excluded from QBI. The phrase ''reasonable compensation'' is a well-known standard in the context of S corporations. Under Rev. Rul. 74–44, 1974–1 C.B. 287, S corporations must pay shareholder-employees ''reasonable compensation for services performed'' prior to making ''dividend'' distributions with respect to shareholder-employees' stock in the S corporation under section 1368. *See also David E. Watson, P.C.* v. *United States,* 668 F.3d 1008, 1017 (8th Cir. 2012). The legislative history of section 199A confirms that the reasonable compensation rule was intended to apply to S corporations.

The Treasury Department and the IRS have received requests for guidance on whether the phrase ''reasonable compensation'' within the meaning of section 199A extends beyond the context of S corporations for purposes of section 199A. The Treasury Department and the IRS believe ''reasonable compensation'' is best read as limited to the context from which it derives: Compensation of S corporation shareholders-employees. If reasonable compensation were to apply outside of the context of S corporations, a partnership could be required to apply the concept of reasonable compensation to its partners, regardless of whether amounts paid to partners were guaranteed. Such a result would violate the principle set forth in Rev. Rul. 69–184, 1969–1 CB 256, that a partner of a partnership cannot be an employee of that partnership. There is no indication that Congress intended to change this long-standing Federal income tax principle. Accordingly, proposed § 1.199A–3(b)(2)(ii)(H) provides that QBI does not include reasonable compensation paid by an S corporation but does not extend this rule to partnerships. Because the trade or business of performing services as an employee is not a qualified trade or business under section 199A(d)(1)(B), wage income received by an employee is never QBI. The rule for reasonable compensation is merely a clarification that, even if an S corporation fails to pay a reasonable wage to its shareholder-employees, the shareholder-employees are nonetheless prevented from including an amount equal to reasonable compensation in QBI.

d. Guaranteed Payments

Section 199A(c)(4)(B) provides that QBI does not include any guaranteed payment described in section 707(c) paid by a partnership to a partner for services rendered with respect to the trade or business. Proposed § 1.199A–3(b)(2)(ii)(I) restates this statutory rule and clarifies that the partnership's deduction for such guaranteed payment is an item of QBI if it is properly allocable to the partnership's trade or business and is otherwise deductible for Federal income tax purposes. It may be unclear whether a guaranteed payment to an upper-tier partnership for services performed for a lower-tier partnership is QBI for the individual partners of the upper-tier partnership if the upper-tier partnership does not itself make a guaranteed payment to its partners. Section 199A(c)(4)(B) does not limit the term ''partner'' to an individual. Consequently, for purposes of the guaranteed payment rule, a partner may be an RPE. Accordingly, proposed § 1.199A–3(b)(2)(ii)(I) clarifies that QBI does not include any guaranteed payment described in section 707(c) paid to a partner for services rendered with respect to the trade or business, regardless of whether the partner is an individual or an RPE. Therefore, for the purposes of this rule, a guaranteed payment paid by a lower-tier partnership to an upper-tier partnership retains its character as a guaranteed payment and is not included in QBI of a partner of the upper-tier partnership regardless of whether it is guaranteed to the ultimate recipient.

e. Section 707(a) Payments

Section 199A(c)(4)(C) provides that QBI does not include, to the extent provided in regulations, any payment described in section 707(a) to a partner for services rendered with respect to the trade or business. Section 707(a) addresses arrangements in which a partner engages with the partnership other than in its capacity as a partner. Within the context of section 199A, payments under section 707(a) for services are similar to, and therefore, should be treated similarly as, guaranteed payments, reasonable compensation, and wages, none of which is includable in QBI. In addition, consistent with the tiered partnership rule for guaranteed payments described previously, to the extent an upper-tier RPE receives a section 707(a) payment, that income should not constitute QBI to the partners of the upper-tier entity. Accordingly, proposed § 1.199A–3(b)(2)(ii)(J) provides that QBI does not include any payment described in section 707(a) to a partner for services rendered with respect to the trade or business, regardless of whether the partner is an individual or an RPE. The Treasury Department and the IRS request comments on whether there are situations in which it is appropriate to include section 707(a) payments in QBI.

viii. Allocation of Items Not Clearly Attributable to a Single Trade or Business

Proposed § 1.199A–3(b)(5) provides that, if an individual or an RPE directly conducts multiple trades or businesses, and has items of QBI that are properly attributable to more than one trade or business, the taxpayer or entity must allocate those items among the several trades or businesses to which they are attributable using a reasonable method that is consistent with the purposes of section 199A. The chosen reasonable method for each item must be consistently applied from one taxable year to another and must clearly reflect the income of each trade or business. There are several different ways to allocate expenses, such as direct tracing or allocating based on gross income, but whether these are reasonable depends on the facts and circumstances of each trade or business. The Treasury Department and the IRS are considering whether ''reasonable method'' should be defined to include the direct tracing method, allocations based on gross income, or other methods, within appropriate parameters. The Treasury Department and the IRS request comments on reasonable methods for the allocation of items not clearly attributable to a single trade or business and whether any safe harbors may be appropriate.

B. Qualified REIT Dividends and Qualified PTP Income

Proposed § 1.199A–3(c)(1) restates the statutory provisions regarding qualified REIT dividends and provides additional guidance relating to such dividends. Pursuant to the regulatory authority conferred under section 199A(f)(4), proposed § 1.199A–3(c) provides an anti-abuse rule to prevent dividend stripping and similar transactions aimed at capturing qualified REIT dividends without having economic exposure to the REIT stock for a meaningful period of time. The proposed anti-abuse rule incorporates the principles of section 246(c).

Proposed § 1.199A–3(c)(2) restates the statutory provisions regarding qualified PTP income and provides additional guidance regarding such income. One commenter questioned whether section 751 income recognized upon the sale of an interest in a PTP must meet the standards for QBI (such as the requirement that the income be effectively connected with a U.S. trade or business) to qualify as qualified PTP income. Section 199A includes special rules exempting qualified PTP income from the W–2 wage and UBIA of qualified property limitations. However, these statutory rules do not exempt qualified PTP income from the other QBI requirements. Accordingly, proposed § 1.199A–3(c)(3)(ii) clarifies that the other rules applicable to the determination of QBI apply to the determination of qualified PTP income.

IV. Proposed § 1.199A–4: Aggregation Rules

A. Overview

The proposed regulations incorporate the rules under section 162 for determining whether a trade or business exists for purposes of section 199A. A taxpayer can have more than one trade or business for purposes of section 162. See § 1.446–1(d)(1). However, in most cases, a trade or business cannot be conducted through more than one entity.

The Treasury Department and the IRS have received comments requesting that the regulations provide that taxpayers be permitted to group or ''aggregate'' trades or businesses under section 199A using the grouping rules described in § 1.469–4 (grouping rules). Section 1.469–4 sets forth the rules for grouping a taxpayer's trade or business activities and rental activities for purposes of applying the passive activity loss and credit limitation rules of section 469. Section 469 uses the term ''activities'' in determining the application of the limitation rules under section 469. In contrast, section 199A applies to trades or businesses. By focusing on activity, the grouping rules may be both under and over inclusive in determining what activities give rise to a trade or business for section 199A purposes.

Additionally, section 469 is a loss limitation rule used to prevent taxpayers from sheltering passive losses with nonpassive income. The section 199A deduction is not based on the level of a taxpayer's involvement in the trade or business (that is, both active and passive owners of a trade or business may be entitled to a section 199A deduction if they otherwise satisfy the requirements of section 199A and these proposed regulations). Complicating matters further, a taxpayer's section 469 groupings may include specified service trades or businesses, requiring separate rules to segregate the two categories of trades or businesses to calculate the section 199A deduction.

Therefore, the grouping rules under section 469 are not appropriate for determining a trade or business for section 199A purposes. Accordingly, the Treasury Department and the IRS are not adopting the section 469 grouping rules as the means by which taxpayers can aggregate trades or businesses for purposes of applying section 199A.

Although it is not appropriate to apply the grouping rules under section 469 to section 199A, the Treasury Department and the IRS agree with practitioners that some amount of aggregation should be permitted. It is not uncommon for what are commonly thought of as single trades or businesses to be operated across multiple entities. Trades or businesses may be structured this way for various legal, economic, or other non-tax reasons. The fact that businesses are operated across entities raises the question of whether, in defining trade or business for purposes of section 199A, section 162 trades or businesses should be permitted or required to be aggregated or disaggregated, and if so, whether such aggregation or disaggregation should occur at the entity level or the individual level. Allowing taxpayers to aggregate trades or businesses offers taxpayers a means of combining their trades or businesses for purposes of applying the W–2 wage and UBIA of qualified property limitations and potentially maximizing the deduction under section 199A. If such aggregation is not permitted, taxpayers could be forced to incur costs to restructure solely for tax purposes. In addition, business and non-tax law requirements may not permit many taxpayers to restructure their operations. Therefore, proposed § 1.199A–4 permits the aggregation of separate trades or businesses, provided certain requirements are satisfied.

The Treasury Department and the IRS are aware that many commenters were concerned with having multiple regimes for grouping (that is, under sections 199A, 1411, and 469). Accordingly, comments are requested on the aggregation method described in proposed § 1.199A–4, including whether this would be an appropriate grouping method for purposes of sections 469 and 1411, in addition to section 199A.

B. Aggregation Rules

Under proposed § 1.199A–4, aggregation is permitted but is not required. However, an individual may aggregate trades or businesses only if the individual can demonstrate that the requirements in proposed § 1.199A–4(b)(1) are satisfied. First, consistent with other provisions in the proposed regulations, each trade or business must itself be a trade or business as defined in § 1.199A–1(b)(13).

Second, the same person, or group of persons, must directly or indirectly, own a majority interest in each of the businesses to be aggregated for the majority of the taxable year in which the items attributable to each trade or business are included in income. All of the items attributable to the trades or businesses must be reported on returns with the same taxable year (not including short years). Proposed § 1.199A–4(b)(3) provides rules allowing for family attribution. Because the proposed rules look to a group of persons, non-majority owners may benefit from the common ownership and are permitted to aggregate. The Treasury Department and the IRS considered certain reporting requirements in which the majority owner or group of owners would be required to provide information about all of the other pass-through entities in which they held a majority interest. Due to the complexity and potential burden on taxpayers of such an approach, proposed § 1.199A–4 does not provide such a reporting requirement. The Treasury Department and the IRS request comments on whether a reporting or other information sharing requirement should be required.

Third, none of the aggregated trades or businesses can be an SSTB. Proposed § 1.199A–5 addresses SSTBs and trades or businesses with SSTB income.

Fourth, individuals and trusts must establish that the trades or businesses meet at least two of three factors, which demonstrate that the businesses are in fact part of a larger, integrated trade or business. These factors include: (1) The businesses provide products and services that are the same (for example, a restaurant and a food truck) or they provide products and services that are customarily provided together (for example, a gas station and a car wash); (2) the businesses share facilities or share significant centralized business elements (for example, common personnel, accounting, legal, manufacturing, purchasing, human resources, or information technology resources); or (3) the businesses are operated in coordination with, or reliance on, other businesses in the aggregated group (for example, supply chain interdependencies).

C. Individuals

An individual is permitted to aggregate trades or businesses operated directly and trades or businesses operated through RPEs. Individual owners of the same RPEs are not required to aggregate in the same manner.

An individual directly engaged in a trade or business must compute QBI, W–2 wages, and UBIA of qualified property for each trade or business before applying the aggregation rules. If an individual has aggregated two or more trades or businesses, then the combined QBI, W–2 wages, and UBIA of qualified property for all aggregated trades or businesses is used for purposes of applying the W–2 wage and UBIA of qualified property limitations described in proposed § 1.199A–1(d)(2)(iv).

D. RPEs

RPEs must compute QBI, W–2 wages, and UBIA of qualified property for each trade or business. An RPE must provide its owners with information regarding QBI, W–2 wages, and UBIA of qualified property attributable to its trades or businesses.

The Treasury Department and the IRS considered permitting aggregation by an RPE in a tiered structure. The Treasury Department and the IRS considered several approaches to tiered structures, including permitting only the operating entity to aggregate the trades or businesses or permitting each tier to add to the aggregated trade or business from a lower-tier, provided that the combined aggregated trade or business otherwise satisfied the requirements of proposed § 1.199A–4(b)(1) had the businesses all been owned by the lower-tier entity. The Treasury Department and the IRS are concerned that the reporting requirements needed for either of these rules would be overly complex for both taxpayers and the IRS to administer. In addition, because the section 199A deduction is in all cases taken at the individual level, it should not be detrimental, and in fact may provide flexibility to taxpayers, to provide for aggregation at only one level. The Treasury Department and the IRS request comments on the proposed approach to tiered structures and the reporting necessary to allow an individual to demonstrate to which trades or businesses his or her QBI, W–2 wages, and UBIA of qualified property are attributable for purposes of calculating his or her section 199A deduction.

E. Reporting and Consistency

Proposed § 1.199A–4(c)(1) requires that once multiple trades or businesses are aggregated into a single aggregated trade or business, individuals must consistently report the aggregated group in subsequent tax years. Proposed § 1.199A–4(c)(1) provides rules for situations in which the aggregation rules are no longer met as well as rules for when a newly created or acquired trade or business can be added to an existing aggregated group.

Proposed § 1.199A–4(c)(2)(i) provides reporting and disclosure requirements for individuals that choose to aggregate, including identifying information about each trade or business that constitutes a part of the aggregated trade or business. Proposed § 1.199A–4(c)(2)(ii) allows the Commissioner to disaggregate trades or businesses if an individual fails to make the required aggregation disclosure. The Treasury Department and the IRS request comments as to whether it is administrable to create a standard under which trades or businesses will be disaggregated by the Commissioner and what that standard might be.

V. Proposed § 1.199A–5: Specified Service Trade or Business and the Trade or Business of Performing Services as an Employee

Section 199A(c)(1) provides that only items attributable to a qualified trade or business are taken into account in determining the section 199A deduction for QBI. Section 199A(d)(1) provides that a ''qualified trade or business'' means any trade or business other than (A) an SSTB, or (B) the trade or business of performing services as an employee.

A. SSTB

This part V.A. explains the provisions under proposed § 1.199A–5 relating to SSTBs. First, the effect of classification as an SSTB is discussed. Second, the exceptions for taxpayers below the threshold amount and a *de minimis* exception are described. Third, guidance is provided on the meaning of the activities listed in the definition of SSTB. Fourth, the rules for determining whether a trade or business is treated as part of an SSTB are described. Finally, rules regarding classification as an employee for purposes of section 199A are discussed.

1. Effect of being an SSTB

a. General Rule

Consistent with section 199A, proposed § 1.199A–5(a)(2) provides that, unless an exception applies, if a trade or business is an SSTB, none of its items are to be taken into account for purposes of determining a taxpayer's QBI. In the case of an SSTB conducted by an entity, such as a partnership or an S corporation, if it is determined that the trade or business is an SSTB, none of the income from that trade or business flowing to an owner of the entity is QBI, regardless of whether the owner participates in the specified service activity. Therefore, a direct or indirect owner of a trade or business engaged in an SSTB is treated as engaged in the SSTB for purposes of section 199A regardless of whether the owner is passive or participated in the SSTB. Similarly, none of the W–2 wages or UBIA of qualified property will be taken into account for purposes of section 199A. For example, because the field of athletics is an SSTB, if a partnership owns a professional sports team, the partners' distributive shares of income from the partnership's athletics trade or business is not QBI, regardless of whether the partners participate in the partnership's trade or business. Proposed § 1.199A–5 contains further examples illustrating the operation of this rule.

b. Exceptions to the General Rule

Under section 199A(d)(3), individuals with taxable income below the threshold amount are not subject to a restriction with respect to SSTBs. Therefore, if an individual or trust has taxable income below the threshold amount, the individual or trust is eligible to receive the deduction under section 199A notwithstanding that a trade or business is an SSTB. As described in part I.C of this Explanation of Provisions, the exclusion of QBI, W–2 wages, and UBIA of qualified property from the computation of the section 199A deduction is subject to a phase-in for individuals with taxable income within the phase-in range. The application of this phase-in is determined at the individual, trust, or estate level, which may not be where the trade or business is operated. Therefore, if a partnership or an S corporation operates an SSTB, the application of the threshold does not depend on the partnership or S corporation's taxable income but rather, the taxable income of the individual partner or shareholder claiming the section 199A deduction. For example, if the partnership's taxable income is less than the threshold amount, but each of the partnership's individual partners have income that exceeds the threshold amount plus $50,000 ($100,000 in the case of a joint return) then none of the partners may claim a section 199A deduction with respect to any income from the partnership's SSTB.

An RPE conducting an SSTB may not know whether the taxable income of any of its equity owners is below the threshold amount. However, the RPE is best positioned to make the determination as to whether its trade or business is an SSTB. Therefore, reporting rules under proposed § 1.199A–6(b)(3)(B) requires each RPE to determine whether it conducts an SSTB and disclose that information to its partners, shareholders, or owners. With respect to each trade or business, once it is determined that a trade or business is an SSTB, it remains an SSTB and cannot be aggregated with other trades or business. In the case of a trade or business conducted by an individual, such as a sole proprietorship, disregarded entity, or grantor trust, the determination of whether the business is an SSTB is made by the individual.

Section 199A defines an SSTB to include any trade or business that ''involves the performance of services in'' a specified service activity. Although the statute, read literally, does not suggest that a certain quantum of specified service activity is necessary to find an SSTB, the Treasury Department and the IRS believe that requiring all taxpayers to evaluate and quantify any amount of specified service activity would create administrative complexity and undue burdens for both taxpayers and the IRS. Therefore, analogous to the regulations under section 448, it is appropriate to provide a *de minimis* rule, under which a trade or business will not be considered to be an SSTB merely because it provides a small amount of services in a specified service activity.

Accordingly, proposed § 1.199A–5(c)(1) provides that a trade or business (determined before the application of the aggregation rules in proposed § 1.199A–4) is not an SSTB if the trade or business has gross receipts of $25 million or less (in a taxable year) and less than 10 percent of the gross receipts of the trade or business is attributable to the performance of services in an SSTB. For trades or business with gross receipts greater than $25 million (in a taxable year), a trade or business is not an SSTB if less than 5 percent of the gross receipts of the trade or business are attributable to the performance of services in an SSTB.

2. Definition of Specified Service Trade or Business

The definition of an SSTB set forth in section 199A incorporates, with modifications, the text of section 1202(e)(3)(A). The text of section 1202(e)(3)(A) substantially tracks the definition of ''qualified personal service corporation'' under section 448. Therefore, consistent with ordinary rules of statutory construction, the guidance in proposed § 1.199A–5(b) is informed by existing interpretations and guidance under both sections 1202 and 448 when relevant. However, existing guidance under those sections is sparse and the scope and purpose of those sections and section 199A are different. The Treasury Department and the IRS also note that, unlike sections 1202(e)(3)(A) and 448, the purpose of section 199A is to provide a deduction based on the character of the taxpayer's trade or business. Distinct guidance for section 199A is warranted. Therefore, the guidance in proposed § 1.199A–5(b) applies only to section 199A, not sections 1202 and 448.

a. Guidance on the Meaning of the Listed Activities

Section 199A(d)(2)(A) provides that an SSTB is any trade or business described in section 1202(e)(3)(A) (applied without regard to the words ''engineering [and] architecture'') or that would be so described if the term ''employees or owners'' were substituted for ''employees'' therein. Section 199A(d)(2)(B) provides that an SSTB is any trade or business that involves the performance of services that consist of investing and investment management, trading, or dealing in securities (as defined in section 475(c)(2)), partnership interests, or commodities (as defined in section 475(e)(2)).

Section 1202 provides an exclusion from gross income for some or all of the gain on the sale of certain qualified small business stock. Section 1202 generally requires that, for stock to be qualified small business stock, the corporation must be engaged in a qualified trade or business. Section 1202(e)(3) provides that, for purposes of section 1201(e), the term ''qualified trade or business'' means any trade or business other than any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees; any banking, insurance, financing, leasing, investing, or similar business; any farming business (including the business of raising or harvesting trees); any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 613 or 613A; and any business of operating a hotel, motel, restaurant, or similar business.

Thus, after application of the modifications described in section 199A(d)(2)(A), the definition of an SSTB for purposes of section 199A is (1) any trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners, and (2) any trade or business that involves the performance of services that consist of investing and investment management, trading, or dealing in securities (as defined in section 475(c)(2)), partnership interests, or commodities (as defined in section 475(e)(2)).

The Treasury Department and the IRS have received comments requesting guidance on the meaning and scope of the various trades or businesses described in the preceding paragraph. The Treasury Department and the IRS agree with commenters that guidance with respect to these trades or businesses is necessary for several reasons. Most importantly, section 199A is a new Code provision intended to benefit a wide range of businesses, and taxpayers need certainty in determining whether their trade or business generates income that is eligible for the section 199A deduction. As previously discussed, given the differing scope, objectives, and, in some respects, language of sections 199A, 448, and 1202, the guidance under sections 1202(e)(3)(A) and 448(d)(2) is not an appropriate substitute for clear and distinct guidance governing what constitutes an SSTB under section 199A. In particular, some SSTBs are listed in section 1202(e)(3)(A), but not listed in section 448(d)(2), such as athletics, financial services, brokerage services, and any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners. In addition, some activities are mentioned only in 199A, such as investment management, trading, and dealing. As described in the remainder of this part V.A.2., proposed § 1.199A–5(b) provides guidance on the definition of an SSTB based on the plain meaning of the statute, past interpretations of substantially similar language in other Code provisions, and other indicia of legislative intent.

i. SSTBs Listed in Section 199A(d)(2)(A)

The definition of an SSTB under section 199A is substantially similar to the list of service trades or businesses provided in section 448(d)(2)(A) and § 1.448–1T(e)(4)(i), as the legislative history notes. See Joint Explanatory Statement of the Committee of Conference, footnotes 44–46. Section 448 prohibits certain taxpayers from computing taxable income under the cash receipts and disbursements method of accounting. Under section 448, qualified personal service corporations generally are not subject to the prohibition from using the cash method. Section 448(d)(2) defines the term *qualified personal service corporation* to include certain employee-owned corporations, substantially all of the activities of which involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting. The regulations under section 448(d)(2), found in § 1.448–1T(e)(4)(i), provide additional guidance on several of the terms, including health, performing arts, and consulting. In addition, there have been several court opinions, technical advice memoranda, and private letter rulings interpreting the various fields listed in section 448(d)(2) and § 1.448–1T(e)(4)(i).

In general, the guidance under section 448(d)(2) emphasizes the direct provision of services by the employees of a trade or business, rather than the application of capital. Commenters have suggested that the regulations under section 448 serve as a reasonable starting point for defining an SSTB for purposes of section 199A. However, commenters also noted that the objectives and included categories of trades or businesses within section 448 and section 199A are different. Consistent with ordinary rules of statutory construction and the legislative history of section 199A, proposed § 1.199A–5(b) draws upon the existing guidance under section 448(d)(2) when appropriate for purposes of section 199A. Proposed § 1.199A–5(b) generally follows the guidance issued under section 448(d)(2) with some modifications. In certain instances, the principles of section 448(d)(2) provide useful analogies in defining the particular fields listed in section 1202(e)(3)(A) (as modified by section 199A(d)(2)(A)) for purposes of section 199A.

In addition, section 1202(e)(3)(A) also includes ''any trade or business where the principal asset of such trade or business is the reputation of skill of 1 or more of its employees.'' Section 199A(d)(2)(A) modifies this clause by adding the words ''or owners'' to the end, to read as follows: ''any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees or owners.'' The meaning of this clause is best determined by examining the language of section 1202(e)(3)(A) in light of the purpose of section 199A.

Case law under section 448 provides that whether a service is performed in a qualifying field under section 448(d)(2) is to be decided by examining all relevant indicia and is not controlled by state licensing laws. See *Rainbow Tax Serv., Inc.* v. *Commissioner,* 128 T.C. 42 (2007); *Kraatz & Craig Surveying Inc.,* v. *Commissioner,* 134 T.C. 167 (2010). This approach also is appropriate for section 199A purposes. Additionally, states can widely vary in what they require in terms of licensure or certification. The Treasury Department and the IRS believe that the Federal tax law should not treat similarly situated taxpayers differently based on a particular state's decision that for consumer protection purposes or otherwise a particular business type requires a license or certification. Thus, proposed § 1.199A–5(b) does not adopt a bright-line licensing rule for purposes of determining whether a trade or business is within a certain field for purposes of section 199A.

a. Health

Proposed § 1.199A–5(b)(2)(ii) is informed by the definition of ''health'' under section 448 and provides that the term ''performance of services in the field of health'' means the provision of medical services by physicians, pharmacists, nurses, dentists, veterinarians, physical therapists, psychologists, and other similar healthcare professionals who provide medical services directly to a patient. The performance of services in the field of health does not include the provision of services not directly related to a medical field, even though the services may purportedly relate to the health of the service recipient. For example, the performance of services in the field of health does not include the operation of health clubs or health spas that provide physical exercise or conditioning to their customers, payment processing, or research, testing, and manufacture and/or sales of pharmaceuticals or medical devices.

b. Law

Proposed § 1.199A–5(b)(2)(iii) is based on the ordinary meaning of ''services in the field of law'' and provides that the term ''performance of services in the field of law'' means the provision of services by lawyers, paralegals, legal arbitrators, mediators, and similar professionals in their capacity as such. The performance of services in the field of law does not include the provision of services that do not require skills unique to the field of law, for example, the provision of services in the field of law does not include the provision of services by printers, delivery services, or stenography services.

c. Accounting

Proposed § 1.199A–5(b)(2)(iv) is based on the ordinary meaning of ''accounting'' and provides that the term ''performance of services in the field of accounting'' means the provision of services by accountants, enrolled agents, return preparers, financial auditors, and similar professionals in their capacity as such. Provision of services in the field of accounting is not limited to services requiring state licensure as a certified public accountant (CPA). The aim of proposed § 1.199A–5(b)(2)(iv) is to capture the common understanding of accounting, which includes tax return and bookkeeping services, even though the provision of such services may not require the same education, training, or mastery of accounting principles as a CPA. The field of accounting does not include payment processing and billing analysis.

d. Actuarial Science

Proposed § 1.199A–5(b)(2)(v) is based on the ordinary meaning ''actuarial science'' and provides that the term ''performance of services in the field of actuarial science'' means the provision of services by actuaries and similar professionals in their capacity as such. Accordingly, the field of actuarial science does not include the provision of services by analysts, economists, mathematicians, and statisticians not engaged in analyzing or assessing the financial costs of risk or uncertainty of events.

e. Performing Arts

Proposed § 1.199A–5(b)(2)(vi) is informed by the definition of ''performing arts'' under section 448 and provides that the term ''performance of services in the field of the performing arts'' means the performance of services by individuals who participate in the creation of performing arts, such as actors, singers, musicians, entertainers, directors, and similar professionals performing services in their capacity as such. The performance of services in the field of performing arts does not include the provision of services that do not require skills unique to the creation of performing arts, such as the maintenance and operation of equipment or facilities for use in the performing arts. Similarly, the performance of services in the field of the performing arts does not include the provision of services by persons who broadcast or otherwise disseminate video or audio of performing arts to the public.

f. Consulting

Proposed § 1.199A–5(b)(2)(vii) is informed by the definition of ''consulting'' under section 448 and provides that the term ''performance of services in the field of consulting'' means the provision of professional advice and counsel to clients to assist the client in achieving goals and solving problems. Consulting includes providing advice and counsel regarding advocacy with the intention of influencing decisions made by a government or governmental agency and all attempts to influence legislators and other government officials on behalf of a client by lobbyists and other similar professionals performing services in their capacity as such. The performance of services in the field of consulting does not include the performance of services other than advice and counsel. This determination is made based on all the facts and circumstances of a person's business.

Additionally, the Treasury Department and the IRS are aware of the concern noted by commenters that in certain kinds of sales transactions it is common for businesses to provide consulting services in connection with the purchase of goods by customers. For example, a company that sells computers may provide customers with consulting services relating to the setup, operation, and repair of the computers, or a contractor who remodels homes may provide consulting prior to remodeling a kitchen. As described previously in this Explanation of Provisions, proposed § 1.199A–5(c) provides a *de minimis* rule, under which a trade or business is not an SSTB if less than 10 percent of the gross receipts (5 percent if the gross receipts are greater than $25 million) of the trade or business are attributable to the performance of services in a specified service activity. However, this *de minimis* rule may not provide sufficient relief for certain trades or business that provide ancillary consulting services. The Treasury Department and the IRS believe that if a trade or business involves the selling or manufacturing of goods, and such trade or business provides ancillary consulting services that are not separately purchased or billed, then such trades or businesses are not in a trade or business in the field of consulting. Accordingly, proposed § 1.199A–5(b)(2)(vii) provides that the field of consulting does not include consulting that is embedded in, or ancillary to, the sale of goods if there is no separate payment for the consulting services.

g. Athletics

The field of athletics is not listed in section 448(d)(2), and there is little guidance on its meaning as used in section 1202(e)(3)(A). However, commenters noted, and the Treasury Department and the IRS agree, that among the services specified in section 199A(d)(2)(A) the field of athletics is most similar to the field of performing arts. Accordingly, proposed § 1.199A–5(b)(2)(viii) provides that the term ''performance of services in the field of athletics'' means the performances of services by individuals who participate in athletic competition such as athletes, coaches, and team managers in sports such as baseball, basketball, football, soccer, hockey, martial arts, boxing, bowling, tennis, golf, skiing, snowboarding, track and field, billiards, and racing. The performance of services in the field of athletics does not include the provision of services that do not require skills unique to athletic competition, such as the maintenance and operation of equipment or facilities for use in athletic events. Similarly, the performance of services in the field of athletics does not include the provision of services by persons who broadcast or otherwise disseminate video or audio of athletic events to the public.

h. Financial Services

Commenters requested guidance as to whether financial services includes banking. These commenters noted that section 1202(e)(3)(A) includes the term financial services, but that banking in separately listed in section 1202(e)(3)(B) which suggests that banking is not included as part of financial services in section 1202(e)(3)(A). The Treasury Department and the IRS agree with such commenters that this suggests that financial services should be more narrowly interpreted here. Therefore, proposed § 1.199A–5(b)(2)(ix) limits the definition of financial services to services typically performed by financial advisors and investment bankers and provides that the field of financial services includes the provision of financial services to clients including managing wealth, advising clients with respect to finances, developing retirement plans, developing wealth transition plans, the provision of advisory and other similar services regarding valuations, mergers, acquisitions, dispositions, restructurings (including in title 11 or similar cases), and raising financial capital by underwriting, or acting as the client's agent in the issuance of securities, and similar services. This includes services provided by financial advisors, investment bankers, wealth planners, and retirement advisors and other similar professionals, but does not include taking deposits or making loans.

i. Brokerage Services

Proposed § 1.199A–5(b)(2)(x) uses the ordinary meaning of ''brokerage services'' and provides that the field of brokerage services includes services in which a person arranges transactions between a buyer and a seller with respect to securities (as defined in section 475(c)(2)) for a commission or fee. This includes services provided by stock brokers and other similar professionals, but does not include services provided by real estate agents and brokers, or insurance agents and brokers.

j. Any Trade or Business Where the Principal Asset of Such Trade or Business Is the Reputation or Skill of 1 or More of Its Employees or Owners

Guidance on the meaning of the ''reputation or skill'' clause in section

1202(e)(3)(A) is limited to dicta in one case. In *John P. Owen* v. *Commissioner,* T.C. Memo 2012–21, the Tax Court examined whether Mr. Owen, whose business was insurance, was entitled to benefits under section 1202 with respect to the sale of his interest in a corporation conducting such business. Under the facts described in the case, the corporation had extensive training programs and sales structures, but primarily relied on the services of independent contractors (including Mr. Owen) in conducting its business. Although the Tax Court acknowledged that the business' success was due to Mr. Owen's efforts, it found that the principal asset of the company in question was the training program and sales structure of the business rather than Mr. Owen's services.

The Treasury Department and the IRS received several comments regarding the meaning of the ''reputation or skill'' clause. Commenters described potential methods to give maximum effect to the literal language of the reputation or skill clause by describing ways to (1) determine the extent to which the reputation or skill of employees or owners constitutes an asset of the business under Federal tax accounting principles, and (2) measure whether such an asset is in fact the principal asset of the business.

One commenter suggested using an activity-based standard under which no service-based businesses would qualify for the section 199A deduction. An SSTB definition this broad would not comport with the statute and would deny a section 199A deduction to businesses that the statute does not appear to exclude. If the ''reputation or skill'' clause was intended to exclude all service businesses from section 199A, there would have been no reason to enumerate specific types of businesses in section 199A(d)(2); that language would be pure surplusage. A broad service-based test would also fail to provide a clear classification of businesses that combine services with sales of products, such as plumbing and HVAC services, if those businesses sell goods or equipment in the course of providing services. Therefore, the Treasury Department and the IRS do not believe it is consistent with the text, structure, or purpose of section 199A to exclude all service businesses above the threshold amount from qualifying for the section 199A deduction.

Another commenter described a balance sheet test that would compare the value of assets other than goodwill and workforce in place to the value of such goodwill and workforce in place. The commenter acknowledged that such a test could also be broader than Congress intended. In addition, the commenter noted that such a test could easily lead to strange and unintuitive results, and may be difficult to apply in the case of small businesses that do not maintain audited financial statements and would both be ripe for abuse, and could potentially result in many legal disputes between taxpayers and the IRS.

Finally, one commenter described a standard based on whether the trade or business involves the provision of highly-skilled services. The commenter argued that the primary benefit of a standard like this is that it would harmonize the meaning of the reputation or skill phrase with the trades or businesses listed in section 1202(e)(3)(A), each of which involve the provision of services by professionals who either received a substantial amount of training (for example, doctors, nurses, lawyers, and accountants), or who have otherwise achieved a high degree of skill in a given field (for example, professional athletes or performing artists).

Congress enacted section 199A to provide a deduction from taxable income to trades or businesses conducted by sole proprietorships and passthrough entities that do not benefit from the income tax rate reduction afforded to C corporations under the TCJA. The Treasury Department and the IRS are concerned that a broad definition of the ''reputation or skill'' phrase that relied on a balance sheet test or numerical ratios would have several consequences inconsistent with the intent of section 199A. Testing businesses based on metrics, some of them subjective, that change over time could result in inappropriate year-over-year tax consequences and lead to distorted decision-making. As the commenters noted, such mechanical tests pose administrative difficulties and fail to provide taxpayers with needed certainty regarding the tax law necessary for conducting their business affairs. Most significantly, such mechanical rules might prevent trades or businesses that Congress intended to be eligible for the section 199A deduction from claiming the section 199A deduction.

In sum, the Treasury Department and the IRS believe that the ''reputation or skill'' clause as used in section 199A was intended to describe a narrow set of trades or businesses, not otherwise covered by the enumerated specified services, in which income is received based directly on the skill and/or reputation of employees or owners. Additionally, the Treasury Department and the IRS believe that ''reputation or skill'' must be interpreted in a manner that is both objective and administrable. Thus, proposed § 1.199A–5(b)(2)(xiv) limits the meaning of the ''reputation or skill'' clause to fact patterns in which the individual or RPE is engaged in the trade or business of: (1) Receiving income for endorsing products or services, including an individual's distributive share of income or distributions from an RPE for which the individual provides endorsement services; (2) licensing or receiving income for the use of an individual's image, likeness, name, signature, voice, trademark, or any other symbols associated with the individual's identity, including an individual's distributive share of income or distributions from an RPE to which an individual contributes the rights to use the individual's image; or (3) receiving appearance fees or income (including fees or income to reality performers performing as themselves on television, social media, or other forums, radio, television, and other media hosts, and video game players). Proposed § 1.199A–5(b)(4) contains two examples illustrating the application of this definition. The Treasury Department and the IRS request comments on this rule, the clarity of definitions for the statutorily enumerated trades or businesses that are SSTBs under section 199A(d)(2)(A), and the accompanying examples.

ii. SSTBs Described in 199A(d)(2)(B)

As mentioned previously, section 199A(d)(2)(B) provides that an SSTB also includes any trade or business that involves the performance of services that consist of investing and investment management, trading, or dealing in securities (as defined in section 475(c)(2)), partnership interests, or commodities (as defined in section 475(e)(2)). This rule does not appear in section 1202(e)(3)(A) or section 448(d)(2).

Section 475(c)(2) provides a detailed list of interests treated as securities, including stock in a corporation; ownership interests in widely held or publicly traded partnerships or trusts; notes, bonds, debentures, or other evidences of indebtedness; interest rate, currency, or equity notional principal contracts; evidences of an interest in, or derivative financial instruments in any of the foregoing securities or any currency, including any option, forward contract, short position, or any similar financial instruments; and certain hedges with respect to any such securities. Section 475(e)(2) provides a similarly detailed list of property treated as a commodity, including any commodity which is actively traded (within the meaning of section 1092(d)(1)) or any notional principal contract with respect to any such commodity, evidences of an interest in, or derivative financial instruments in any of the foregoing commodities, and certain hedges with respect to any such commodities.

a. Investing and Investment Management

Proposed § 1.199A–5(b)(2)(xi) uses the ordinary meaning of ''investing and investment management'' and provides that any trade or business that involves the ''performance of services that consist of investing and investment management'' means a trade or business that earns fees for investment, asset management services, or investment management services including providing advice with respect to buying and selling investments. The performance of services that consist of investing and investment management would include a trade or business that receives either a commission, a flat fee, or an investment management fee calculated as a percentage of assets under management. The performance of services of investing and investment management does not include directly managing real property.

b. Trading

Proposed § 1.199A–5(b)(2)(xii) provides that any trade or business involving the ''performance of services that consist of trading'' means a trade or business of trading in securities, commodities, or partnership interests. Whether a person is a trader is determined taking into account the relevant facts and circumstances. Factors that have been considered relevant to determining whether a person is a trader include the source and type of profit generally sought from engaging in the activity regardless of whether the activity is being provided on behalf of customers or for a taxpayer's own account. *See Endicott* v. *Commissioner,* T.C. Memo 2013–199; *Nelson* v. *Commissioner,* T.C. Memo 2013–259, *King* v. *Commissioner,* 89 T.C. 445 (1987). A person that is a trader under these principles will be treated as performing the services of trading for purposes of section 199A(d)(2)(B).

c. Dealing in Securities, Partnership Interests, and Commodities

For purposes of proposed § 1.199A–5(b)(2)(xiii), the ''performance of services that consist of dealing in securities (as defined in section 475(c)(2))'' means regularly purchasing securities from and selling securities to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in securities with customers in the ordinary course of a trade or business. For purposes of the preceding sentence, a taxpayer that regularly originates loans in the ordinary course of a trade or business of making loans but engages in no more than negligible sales of the loans is not dealing in securities for purposes of section 199A(d)(2). See § 1.475(c)–1(c)(2) and (4) for the definition of negligible sales.

For purposes of proposed § 1.199A–5(b)(2)(xiii), ''the performance of services that consist of dealing in partnership interests'' means regularly purchasing partnership interests from and selling partnership interests to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in partnership interests with customers in the ordinary course of a trade or business.

For purposes of proposed § 1.199A–5(b)(2)(xiii), ''the performance of services that consist of dealing in commodities (as defined in section 475(e)(2))'' means regularly purchasing commodities from and selling commodities to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in commodities with customers in the ordinary course of a trade or business.

3. Defining What Is Included in an SSTB

The Treasury Department and the IRS are aware that some taxpayers have contemplated a strategy to separate out parts of what otherwise would be an integrated SSTB, such as the administrative functions, in an attempt to qualify those separated parts for the section 199A deduction. Such a strategy is inconsistent with the purpose of section 199A. Therefore, in accordance with section 199A(f)(4), in order to carry out the purposes of section 199A, proposed § 1.199A–5(c)(2) provides that an SSTB includes any trade or business with 50 percent or more common ownership (directly or indirectly) that provides 80 percent or more of its property or services to an SSTB. Additionally, if a trade or business has 50 percent or more common ownership with an SSTB, to the extent that the trade or business provides property or services to the commonly-owned SSTB, the portion of the property or services provided to the SSTB will be treated as an SSTB (meaning the income will be treated as income from an SSTB). For example, A, a dentist, owns a dental practice and also owns an office building. A rents half the building to the dental practice and half the building to unrelated persons. Under proposed § 1.199A–5(c)(2), the renting of half of the building to the dental practice will be treated as an SSTB.

Additionally, proposed § 1.199A–5 provides a rule that if a trade or business (that would not otherwise be treated as an SSTB) has 50 percent or more common ownership with an SSTB and shared expenses, including wages or overhead expenses with the SSTB, it is treated as incidental to an SSTB and, therefore, as an SSTB, if the trade or business represents no more than five percent of gross receipts of the combined business.

B. Trade or Business of Performing Services as an Employee

Under section 199(d)(1)(B), the trade or business of performing services as an employee is not a qualified trade or business. Unlike an SSTB, there is no threshold amount that applies to the trade or business of performing services as an employee. Thus, wage or compensation income earned by any employee is not eligible for the section 199A deduction no matter the amount.

1. Definition

An individual is an employee for Federal employment tax purposes if he or she has the status of an employee under the usual common law and statutory rules applicable in determining the employer-employee relationship. Guides for determining employment status are found in §§ 31.3121(d)–1, 31.3306(i)–1, and 31.3401(c)–1. As stated in the regulations, generally, the common law relationship of employer and employee exists when the person for whom the services are performed has the right to direct and control the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the direction and control of the employer not only as to what shall be done but how it shall be done. In this connection it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he or she has the right to do so.

In addition, the regulations and section 3401(c) state, generally, that an officer of a corporation (including an S Corporation) is an employee of the corporation. However, an officer of a corporation who does not perform any services or performs only minor services in his or her capacity as officer and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is not considered to be an employee of the corporation. Whether an officer's services are minor is a question of fact that depends on the nature of the services, the frequency and duration of their performance, and the actual and potential importance or necessity of the services in relation to the conduct of the corporation's business. *See* Rev. Rul. 74–390.

To provide clarity, proposed § 1.199A–5(d) provides a general rule that income from the trade or business of performing services as an employee refers to all wages (within the meaning of section 3401(a)) and other income earned in a capacity as an employee, including payments described in § 1.6041–2(a)(1) (other than payments to individuals described in section 3121(d)(3)) and § 1.6041–2(b)(1). If an individual derives income in the course of a trade or business that is not described in section 3401(a), § 1.6041–2(a)(1) (other than payments to individuals described in section 3121(d)(3)), or § 1.6041–2(b)(1), that individual is not considered to be in the trade or business of performing services as an employee with regard to such income.

2. Presumption for Former Employees

Section 199A provides that the trade or business of providing services as an employee is not eligible for the section 199A deduction. Therefore, taxpayers and practitioners noted that it may be beneficial for employees to treat themselves as independent contractors or as having an equity interest in a partnership or S corporation in order to benefit from the deduction under section 199A.

Section 530(b) of the Revenue Act of 1978 (Pub. L. 95–600), as amended by section 9(d)(2) of Public Law 96–167, section 1(a) of Public Law 96–541, and section 269(c) of Public Law 97–248, provides a prohibition against regulations and rulings on employment status for purposes of employment taxes. Specifically, section 530(b) provides that no regulation or revenue ruling shall be published before the effective date of any law clarifying the employment status of individuals for purposes of the employment taxes by the Treasury Department (including the IRS) with respect to the employment status of any individual for purposes of the employment taxes. Section 530(c) of the Revenue Act of 1978 provides that, for purposes of section 530, the term ''employment tax'' means any tax imposed by subtitle C of the Internal Revenue Code of 1954, and the term ''employment status'' means the status of an individual, under the usual common law rules applicable in determining the employer-employee relationship as an employee or as an independent contractor (or other individual who is not an employee). These longstanding rules of section 530 of the Revenue Act of 1978 limit the ability of the IRS to impose employment tax liability on employers for misclassifying employees as independent contractors but do not preclude challenging a worker's status for purposes of section 199A, an income tax provision under subtitle A of the Code.

Therefore, proposed § 1.199A–5(d)(3) provides that for purposes of section 199A, if an employer improperly treats an employee as an independent contractor or other non-employee, the improperly classified employee is in the trade or business of performing services as an employee notwithstanding the employer's improper classification. This issue is particularly important in the case of individuals who cease being treated as employees of an employer, but subsequently provide substantially the same services to the employer (or a related entity) but claim to do so in a capacity other than as an employee. However, it would not be appropriate to provide that someone who formerly was an employee of an employer is now ''less likely'' to be respected as an independent contractor. Such a rule would not treat similarly-situated taxpayers similarly: Two individuals who have a similar relationship with a company and each claim to be treated as independent contractors would be treated differently depending on any prior employment history with the company. Therefore, proposed § 1.199A–5(d)(3) does not provide any new or different standards to be properly classified as an independent contractor or owner of a business. Instead, proposed § 1.199A–5(d)(3) contains a presumption that applies in certain situations to ensure that individuals properly substantiate their status.

Specifically, proposed § 1.199A–5(d)(3) provides that, solely for purposes of section 199A(d)(1)(B) and the regulations thereunder, an individual who was treated as an employee for Federal employment tax purposes by the person to whom he or she provided services, and who is subsequently treated as other than an employee by such person with regard to the provision of substantially the same services directly or indirectly to the person (or a related person), is presumed to be in the trade or business of performing services as an employee with regard to such services. This presumption may be rebutted only upon a showing by the individual that, under Federal tax rules, regulations, and principles (including common-law employee classification rules), the individual is performing services in a capacity other than as an employee. This presumption applies regardless of whether the individual provides services directly or indirectly through an entity or entities. This presumption is solely for purposes of section 199A and does not otherwise change the employment tax classification of the individual. Section 199A is in subtitle A of the Code, and this rule does not apply for purposes of any other subtitle, including subtitle C. Accordingly, this rule does not implicate section 530(b) of the Revenue Act of 1978. Proposed § 1.199A–5(d)(3)(ii) contains three examples illustrating this rule.

VI. Proposed § 1.199A–6: Special Rules for RPEs, PTPs, Trusts, and Estates

Proposed § 1.199A–6 provides guidance that certain specified entities (for example, RPEs, PTPs, trusts, and estates) may need to follow for purposes of computing the entities' or their owners' section 199A deductions.

A. Computational Steps for RPEs and PTPs

Although RPEs cannot take the section 199A deduction at the RPE level, each RPE must determine and report the information necessary for its direct and indirect owners to determine their own section 199A deduction. Proposed § 1.199A–6(b) follows the rules applicable to individuals with taxable income above the threshold amount set forth in § 1.199A–1(d) in directing RPEs to determine what amounts and information to report to their owners and the IRS, including QBI, W–2 wages, the UBIA of qualified property for each trade or business directly engaged in, and whether any of its trades or businesses are SSTBs. RPEs must also determine and report qualified REIT dividends and qualified PTP income received directly by the RPE. Proposed § 1.199A–6(b)(3) then requires each RPE to report this information on or with the Schedules K–1 issued to the owners. RPEs must report this information regardless of whether a taxpayer is below the threshold. The Treasury Department and the IRS request comments whether it is administrable to provide a special rule that if none of the owners of the

RPE have taxable income above the threshold amount, the RPE does not need to determine and report W–2 wages, UBIA of qualified property, or whether the trade or business is an SSTB. Although such a rule would relieve an RPE of an unnecessary burden, the RPE would need to have knowledge of the ultimate owner's taxable income.

The definition of an RPE does not include a PTP. However, PTPs must still determine and report QBI under the rules of proposed § 1.199A–3 for each trade or business in which the PTP is engaged and whether those trades or businesses are SSTBs. A PTP must also determine whether it has received any qualified REIT dividends or qualified PTP income or loss from another PTP. These items must be reported on or with the Schedule K–1. A PTP is not required to determine or report W–2 wages or the UBIA of qualified property.

B. Application to Trusts, Estates, and Beneficiaries

Proposed § 1.199A–6(d) contains special rules for applying section 199A to trusts and decedents' estates. To the extent that a grantor or another person is treated as owning all or part of a trust under sections 671 through 679 (grantor trust), including qualified subchapter S trusts (QSSTs) with respect to which the beneficiary has made an election under section 1361(d), the owner will compute its QBI with respect to the owned portion of the trust as if that QBI had been received directly by the owner.

In the case of a section 199A deduction claimed by a non-grantor trust or estate, section 199A(f)(1)(B) applies rules similar to the rules under former section 199(d)(1)(B)(i) for the apportionment of W–2 wages and the apportionment of UBIA of qualified property. In the case of a non-grantor trust or estate, the QBI and expenses properly allocable to the business, including the W–2 wages relevant to the computation of the wage limitation, and relevant UBIA of depreciable property must be allocated among the trust or estate and its various beneficiaries. Specifically, proposed § 1.199A–6(d)(3)(ii) provides that each beneficiary's share of the trust's or estate's W–2 wages is determined based on the proportion of the trust's or estate's DNI that is deemed to be distributed to that beneficiary for that taxable year. Similarly, the proportion of the entity's DNI that is not deemed distributed by the trust or estate will determine the entity's share of the QBI and W–2 wages. In addition, if the trust or estate has no DNI in a particular taxable year, any QBI and W–2 wages are allocated to the trust or estate, and not to any beneficiary.

In addition, proposed § 1.199A–6(d)(3)(ii) provides that, to the extent the trust's or estate's UBIA of qualified property is relevant to a trust or estate and any beneficiary, the trust's or estate's UBIA of qualified property will be allocated among the trust or estate and its beneficiaries in the same proportion as DNI of the trust or estate is allocated. This is the case regardless of how any depreciation or depletion deductions resulting from the same property may be allocated under section 643(c) among the trust or estate and its beneficiaries for purposes other than section 199A.

Under section 199A, the threshold amount is determined at the trust level without taking into account any distribution deductions. Commenters have noted that taxpayers could circumvent the threshold amount by dividing assets among multiple trusts, each of which would claim its own threshold amount. This result is inappropriate and inconsistent with the purpose of section 199A. Therefore, proposed § 1.199A–6(d)(3)(v) provides that trusts formed or funded with a significant purpose of receiving a deduction under section 199A will not be respected for purposes of section 199A.

The Treasury Department and the IRS request comments with respect to whether taxable recipients of annuity and unitrust interests in charitable remainder trusts and taxable beneficiaries of other split-interest trusts may be eligible for the section 199A deduction to the extent that the amounts received by such recipients include amounts that may give rise to the deduction. Such comments should include explanations of how amounts that may give rise to the section 199A deduction would be identified and reported in the various classes of income of the trusts received by such recipients and how the excise tax rules in section 664(c) would apply to such amounts.

VII. Proposed § 1.643(f)–1: Anti-Avoidance Rules for Multiple Trusts

As described in section VI B of the Explanation of Provisions, under section 199A, the threshold amount is determined at the trust level without taking into account any distribution deductions. Therefore, taxpayers could circumvent the threshold amount by dividing assets among multiple trusts, each of which would claim its own threshold amount. This result is inappropriate and inconsistent with the purpose of section 199A and general trust principles.

To address this and other concerns regarding the abusive use of multiple trusts, proposed § 1.643(f)–1 confirms the applicability of section 643(f). As noted in part II of the Background, section 643(f) permits the Secretary to prescribe regulations to prevent taxpayers from establishing multiple non-grantor trusts or contributing additional capital to multiple existing non-grantor trusts in order to avoid Federal income tax. Proposed § 1.643(f)–1 provides that, in the case in which two or more trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and a principal purpose for establishing such trusts or contributing additional cash or other property to such trusts is the avoidance of Federal income tax, then such trusts will be treated as a single trust for Federal income tax purposes. For purposes of applying this rule, spouses are treated as only one person and, accordingly, multiple trusts established for a principal purpose of avoiding Federal income tax may be treated as a single trust even in cases where separate trusts are established or funded independently by each spouse. Proposed § 1.643(f)–1 further provides examples to illustrate specific situations in which multiple trusts will or will not be treated as a single trust under this rule, including a situation where multiple trusts are created with a principal purpose of avoiding the limitations of section 199A. The application of proposed § 1.643(f)–1, however, is not limited to avoidance of the limitations under section 199A and proposed §§ 1.199A–1 through 1.199A–6.

The rule in proposed § 1.643(f)–1 would apply to any arrangement involving multiple trusts entered into or modified on or after August 16, 2018. In the case of any arrangement involving multiple trusts entered into or modified before August 16, 2018, the determination of whether an arrangement involving multiple trusts is subject to treatment under section 643(f) will be made on the basis of the statute and the guidance provided regarding that provision in the legislative history of section 643(f). Pending the publication of final regulations, the position of the Treasury Department and the IRS is that the rule in proposed § 1.643(f)–1 generally reflects the intent of Congress regarding the arrangements involving multiple trusts that are appropriately subject to treatment under section 643(f).

VIII. Specified Agricultural or Horticultural Cooperatives

In the TCJA and the 2018 Act, Congress provided special rules for applying section 199A in the case of specified agricultural and horticultural cooperatives. The Treasury Department and the IRS continue to study this area and intend to issue separate proposed regulations describing rules for applying section 199A to specified agricultural and horticultural cooperatives and their patrons later this year. As provided in section 199A(g)(6), such regulations will generally be based on the regulations applicable to cooperatives and their patrons under former section 199 (as in effect before its repeal). The Treasury Department and the IRS anticipate that the regulations will provide that section 199A(g) applies only to the patronage business of a relevant cooperative. The proposed regulations will also provide more information for taxpayers that must apply the reduction under section 199A(b)(7), which is a special rule with respect to income received from cooperatives.

Availability of IRS Documents

IRS notices cited in this preamble are made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Proposed Effective/Applicability Date

Section 7805(b)(1)(A) and (B) of the Code generally provide that no temporary, proposed, or final regulation relating to the internal revenue laws may apply to any taxable period ending before the earliest of (A) the date on which such regulation is filed with the **Federal Register**, or (B) in the case of a final regulation, the date on which a proposed or temporary regulation to which the final regulation relates was filed with the **Federal Register**. However, section 7805(b)(2) provides that regulations filed or issued within 18 months of the date of the enactment of the statutory provision to which they relate are not prohibited from applying to taxable periods prior to those described in section 7805(b)(1). Furthermore, section 7805(b)(3) provides that the Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse.

Accordingly, proposed §§ 1.199A–1 through 1.199A–6 generally are proposed to apply to taxable years ending after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, taxpayers may rely on the rules set forth in proposed §§ 1.199A–1 through 1.199A–6, in their entirety, until the date a Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. In addition, to prevent abuse of section 199A and the regulations thereunder, the anti-abuse rules of proposed §§ 1.199A–2(c)(1)(iv), 1.199A–3(c)(2)(B), 1.199A–5(c)(2), 1.199A–5(c)(3), 1.199A–5(d)(3), and 1.199A–6(d)(3)(v) are proposed to apply to taxable years ending after December 22, 2017, the date of enactment of the TCJA. Finally, the provisions of proposed § 1.643–1, which prevent abuse of the Code generally through the use of trusts, are proposed to apply to taxable years ending after August 16, 2018.

Section 199A(f)(1) provides that section 199A applies at the partner or S corporation shareholder level, and that each partner or shareholder takes into account such person's allocable share of each qualified item. Section 199A(c)(3) provides that the term ''qualified item'' means items that are effectively connected with a U.S. trade or business, and ''included or allowed in determining taxable income from the taxable year.'' Section 199A applies to taxable years beginning after December 31, 2017. However, there is no statutory requirement under section 199A that a qualified item arise after December 31, 2017.

Section 1366(a) generally provides that, in determining the income tax of a shareholder for the shareholder's taxable year in which the taxable year of the S corporation ends, the shareholder's pro rata share of the corporation's items is taken into account. Similarly, section 706(a) generally provides that, in computing the taxable income of a partner for a taxable year, the partner includes items of the partnership for any taxable year of the partnership ending within or with the partner's taxable year. Therefore, income flowing to an individual from a partnership or S corporation is subject to the tax rates and rules in effect in the year of the individual in which the entity's year closes, not the year in which the item actually arose.

Accordingly, for purposes of determining QBI, W–2 wages, and UBIA of qualified property, the effective dates provisions provide that if an individual receives QBI, W–2 wages, or UBIA of qualified property from an RPE with a taxable year that begins before January 1, 2018, and ends after December 31, 2017, such items are treated as having been incurred by the individual during the individual's tax year during which such RPE taxable year ends.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

These proposed regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Treasury Department has determined that the proposed rulemaking is subject to review as economically significant under section 1(c) of the Memorandum of Agreement, and OMB concurs with this designation. Accordingly, these proposed regulations have been reviewed by the Office of Management and Budget. For more detail on the economic analysis, please refer to the following analysis.

A. Overview

Congress enacted section 199A to provide individuals, estates, and trusts a deduction of up to 20 percent of QBI from domestic businesses, which includes trades or businesses operated as a sole proprietorship or through a partnership, S corporation, trust, or estate. As stated in the Explanation of Provisions, these proposed regulations are necessary to provide taxpayers with computational, definitional, and anti-avoidance guidance regarding the application of section 199A. The proposed regulations provide guidance to taxpayers for purposes of calculating the section 199A deduction. They provide clarity for taxpayers in determining their eligibility for the deduction and the amount of the allowed deduction. Among other benefits, this clarity helps ensure that taxpayers all calculate the deduction in a similar manner, which encourages decision-making that is economically efficient contingent on the provisions of the overall Code.

The proposed regulations contain seven sections, six proposed under section 199A (proposed §§ 1.199A–1 through 1.199A–6) and one proposed under section 643(f) (proposed

§ 1.643(f)–1). Each of proposed §§ 1.199A–1 through 1.199A–6 provides rules relevant to the section 199A deduction and proposed § 1.643(f)–1 would establish anti-abuse rules to prevent taxpayers from establishing multiple non-grantor trusts or contributing additional capital to multiple existing non-grantor trusts in order to avoid Federal income tax, including abuse of section 199A. This economic analysis describes the economic benefits and costs of each of the seven sections of the proposed regulations.

B. Baseline

The analysis in this section compares the proposed regulation to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these proposed regulations.

C. Economic Analysis of Proposed § 1.199A–1

1. Background

Because the section 199A deduction has not previously been available, a large number of the relevant terms and necessary calculations taxpayers are currently required to apply under the statute can benefit from greater specificity. For example, the statute uses the term *trade or business* to refer to the enterprise whose income would be potentially eligible for the deduction but does not define what constitutes a trade or business for purposes of section 199A; the proposed regulations provide that taxpayers should generally apply the definition of a trade or business provided by section 162(a). The definition of trade or business in proposed § 1.199A–1 is extended beyond the section 162 definition if a taxpayer chooses to aggregate businesses under the rules of proposed § 1.199A–4. In addition, solely for purposes of section 199A, the rental or licensing of property to a related trade or business is treated as a trade or business if the rental or licensing and the other trade or business are commonly controlled under proposed § 1.199A–4(b)(1)(i). The proposed regulations also make clear that the section 199A deduction is allowed when calculating alternative minimum taxable income of individuals.

Because the section 199A deduction has multiple components that may interact in determining the deduction, it is also valuable to lay out rules for calculating the deduction since the statute does not provide each of those particulars.

Alternative approaches the Treasury Department and the IRS could have proposed would be to remain silent on additional definitional specificities and to allow post-limitation netting in calculating the section 199A deduction. The Treasury Department and the IRS concluded these approaches would likely give rise to less economically efficient tax-related decisions than would relying on statutory language alone and requiring or leaving open the possibility of post-limitation netting.

2. Anticipated Benefits of Proposed § 1.199A–1

The Treasury Department and the IRS expect that the definitions and guidance provided in § 1.199A–1 will implement the 199A deduction in an economically efficient manner. An economically efficient tax system generally aims to treat income derived from similar economic decisions similarly in order to reduce incentives to make choices based on tax rather than market incentives. In this context, the principal benefit of proposed § 1.199A–1 is to reduce taxpayer uncertainty regarding the calculation of the section 199A deduction relative to an alternative scenario in which no such regulations were issued. In the absence of the clarifications in proposed § 1.199A–1 regarding, for example, the definition of an eligible trade or business, similarly situated taxpayers might interpret the statutory rules of section 199A differently, given the statute's limited prescription of the implementation details. In addition, without these regulations it is likely that many taxpayers impacted by section 199A would take on more (or less) than the optimal level of risk in allocating resources within or across their businesses. Both of these actions would give rise to economic inefficiencies. The proposed regulations would provide a uniform signal to businesses and thus lead taxpayers to make decisions that are more economically efficient contingent on the overall Code. As an example, proposed § 1.199A–1 prescribes the steps taxpayers must take to calculate the QBI deduction in a manner that avoids perverse incentives for shifting wages and capital assets across businesses. The statute does not address the ordering for how the W–2 wages and UBIA of qualified property limitations should be applied when taxpayers have both positive and negative QBI from different businesses. The proposed regulations clarify that in such cases the negative QBI should offset positive QBI prior to applying the wage and capital limitations. For taxpayers who would have assumed in the alternate that negative QBI offsets positive QBI after applying the wage and capital limitations, the proposed approach weakens the incentive to shift W–2 wage labor or capital (in the form of qualified property) from one business to another to maximize the section 199A deduction.

To illustrate this, consider a taxpayer who is above the statutory threshold and owns two non-service sector businesses, A and B. A has net qualified income of $10,000, while B has net qualified income of −$5,000. Suppose that A paid $3,000 in W–2 wages, B paid $1,000 in W–2 wages, and neither business has tangible capital. If negative QBI offsets positive QBI after applying the wage and capital limitations, then A generates a tentative deduction of $1,500, while B generates a tentative deduction of −$1,000, for a total deduction of $500. After moving B's W–2 wages to A, A's tentative deduction rises to $2,000, while B's remains −$1,000, increasing the total deduction to $1,000. If, on the other hand, negative QBI offsets positive QBI prior to applying the wage and capital limitations (as in the proposed regulations), then A and B have combined income of $5,000, and the total deduction is $1,000 because the wage and capital limitations are non-binding. After moving B's wages to A, the total deduction remains $1,000. Thus, an incentive to shift wages arises if negative QBI offsets positive QBI after applying the wage and capital limitations. By taking the opposite approach, proposed § 1.199A–1 reduces incentives for such tax-motivated, economically inefficient reallocations of labor (or capital) relative to a scenario in which offsets were taken after wage and capital limitations were applied.

3. Anticipated Costs of Proposed § 1.199A–1

The Treasury Department and the IRS do not anticipate any meaningful economic distortions to be induced by proposed § 1.199A–1 and request comment regarding this anticipated impact. However, changes to the collective paperwork burden arising from this and other sections of these regulations are discussed in section J, *Anticipated impacts on administrative and compliance costs,* of this analysis.

D. Economic Analysis of Proposed § 1.199A–2

1. Background

Section 199A provides a deduction of up to 20 percent of the taxpayer's income from qualifying trades or businesses. Taxpayers with incomes above a threshold amount cannot enjoy the full 20 percent deduction unless they determine that their businesses pay a sufficient amount of wages and/or maintain a sufficient stock of tangible capital, among other requirements.

Because this deduction has not previously been available, proposed § 199A–2 provides greater specificity than is available from the statute regarding the definitions of W–2 wages and UBIA of qualified property (that is, depreciable capital stock) relevant to this aspect of the deduction. For example, the proposed regulations make clear that property that is transferred or acquired within a specific timeframe with a principal purpose of increasing the section 199A deduction is not considered qualified property for purposes of the section 199A deduction. In addition, proposed § 1.199A–2 generally follows prior guidance for the former section 199 deduction in determining which W–2 wages are relevant for section 199A purposes, with additional rules for allocating wages amongst multiple trades or businesses. In these and other cases, the proposed regulations generally aim, within the context of the legislative language and other tax considerations, to ensure that only genuine business income is eligible for the section 199A deduction, and to reduce business compliance costs and government administrative costs.

Alternative approaches would be to remain silent or to choose different definitions of W–2 wages or qualified property for the purposes of claiming the deduction. The Treasury Department and the IRS rejected these alternatives as being inconsistent with other definitions or requirements under the Code and therefore unnecessarily costly for taxpayers to comply with and the IRS to administer.

2. Anticipated Benefits of Proposed § 1.199A–2

The Treasury Department and IRS expect that proposed § 1.199A–2 will implement the 199A deduction in an economically efficient manner. For example, proposed § 1.199A–2 will discourage some inefficient transfers of capital given the statute's silence regarding the circumstances in which certain property transfers would or would not be considered under section 199A. Specifically, the proposed rules make clear that property transferred or acquired within a specific timeframe with a principal purpose of increasing the section 199A deduction is not considered qualified for purposes of the 199A deduction.

The proposed regulations will also reduce taxpayer uncertainty regarding the implementation of the section 199A deduction relative to a scenario in which no regulations were issued. In the absence of such clarification, similarly situated taxpayers would likely interpret the section 199A deduction differently to the extent that the statute does not adequately specify the particular implementation issues addressed by 199A–2; and as a result, taxpayers might take on more (or less) than the optimal level of risk in their interpretations. The proposed regulations would lead taxpayers to make decisions that were more economically efficient, conditional on the overall Code.

3. Anticipated Costs of Proposed § 1.199A–2

The Treasury Department and the IRS do not anticipate any meaningful economic distortions to be induced by proposed § 1.199A–2, and request comment regarding this anticipated impact. However, changes to the collective paperwork burden arising from this and other sections of these regulations are discussed in section J, *Anticipated impacts on administrative and compliance costs,* of this analysis.

E. Economic Analysis of Proposed § 1.199A–3

1. Background

Section 199A provides a deduction of up to 20 percent of the taxpayer's income from qualifying trades or businesses. In the absence of legislative and regulatory constraints, taxpayers would have an incentive to count as income some income that, from an economic standpoint, did not accrue specifically from qualifying economic activity. The proposed regulations clarify what does and does not constitute QBI for purposes of the 199A deduction, providing greater implementation specificity than provided by the statute. Because guaranteed payments for capital, for example, are not at risk in the same way as other forms of income, they might reasonably be excluded from QBI. Similarly, Treasury proposes that income that is a guaranteed payment, but which is filtered through a tiered partnership in order to avoid being labeled as such, should be treated similarly to guaranteed payments in general and therefore excluded from QBI. This principle applies to other forms of income that similarly represent income that either is not at risk or does not flow from the specific economic value provided by a qualifying trade or business, such as returns on investments of working capital. The proposed regulations define and clarify the types of income that might reasonably be considered QBI, within the constraints of the legislation.

2. Anticipated Benefits of Proposed § 1.199A–3

The Treasury Department and IRS expect that proposed *§ 1.199A–3* regulations will implement the 199A deduction in an economically efficient manner. For example, 199A–3 will discourage the creation of tiered partnerships purely for the purposes of increasing the section 199A deduction. In the absence of regulation, some taxpayers would likely create tiered partnerships under which a lower-tier partnership would make a guaranteed payment to an upper-tier partnership, and the upper-tier partnership would pay out this income to its partners without guaranteeing it. Such an organizational structure would likely be economically inefficient because it was, apparently, created solely for tax minimization purposes and not for reasons related to efficient economic decision-making.

The Treasury Department and the IRS further expect that the proposed regulations will reduce uncertainty over whether particular forms of income do or do not constitute QBI relative to a scenario in which no regulations were issued. In the absence of regulations, taxpayers would still need to determine what income is considered QBI and similarly situated taxpayers might interpret the statutory rules differently and pursue income-generating activities based on different assumptions about whether that income would qualify for QBI. Proposed § 1.199A–3 provides clearer guidance for how to determine QBI, helping to ensure that taxpayers face uniform incentives when making economic decisions, a tenet of economic efficiency.

3. Anticipated Costs of Proposed § 1.199A–3 Relative to the Baseline

The Treasury Department and the IRS do not anticipate any meaningful economic distortions to be induced by proposed § 1.199A–3, and request comment regarding this anticipated impact. However, changes to the collective paperwork burden arising from this and other sections of these regulations are discussed in section J, *Anticipated impacts on administrative and compliance costs,* of this analysis.

F. Economic Analysis of Proposed § 1.199A–4

1. Background

Businesses may organize either as C corporations, which are owned by stockholders, or in a form generally called a passthrough, which may take one of several legal forms including sole proprietorships, under which there does not exist a clear separation between the owners and the business's decision-makers. Each organizational structure, in some circumstance, may be economically efficient, depending on the risk profile, information asymmetries, and decision-making challenges pertaining to the specific business and on the risk preferences and economic situations of the individual owners. An economically efficient tax system would keep the choice among organizational structures neutral contingent on the provisions of the corporate income tax.

This principle of neutral tax treatment further applies to the various organizational structures that qualify as passthroughs. Many passthrough business entities are connected through ownership, management, or shared decision-making. The proposed aggregation rule allows individuals to aggregate their trades or businesses for the purposes of calculating the section 199A deduction. It thus helps ensure that significant choices over ownership and management relationships within businesses are not chosen solely to increase the section 199A deduction.

An alternative approach would be not to allow aggregation for purposes of claiming the deduction. The Treasury Department and the IRS decided to allow aggregation in the specified circumstances to minimize or avoid distortions in organizational form that could arise if aggregation were not allowed.

2. Anticipated Benefits of Proposed § 1.199A–4

The Treasury Department and the IRS expect that the aggregation guidance provided in proposed § 1.199A–4 will implement the 199A deduction in an economically efficient manner. Economic tax principles are called into play here because a large number of businesses that could commonly be thought of as a single trade or business actually may be divided across multiple entities for legal or economic reasons. Allowing taxpayers to aggregate trades or businesses offers taxpayers a means of putting together what they think of as their trade or business for the purposes of claiming the deduction under section 199A without otherwise changing ownership and management structures. If such aggregation were not permitted, certain taxpayers would restructure solely for tax purposes, with the resulting structures leading to less efficient economic decision-making.

3. Anticipated Costs of Proposed § 1.199A–4

The proposed regulations require common majority ownership to apply the aggregation rule. If no aggregation were allowed, taxpayers would have to combine businesses to calculate the deduction based on the combined income, wages, and capital. The majority ownership threshold may thus encourage owners to concentrate their ownership in order to benefit from the aggregation rule. The additional costs of the proposed regulations would be limited to those owners who would find merging entities too costly based on other market conditions, but under these regulations may find it beneficial to increase their ownership share in order to aggregate their businesses and maximize their QBI deduction.

Changes to the collective paperwork burden arising from proposed § 1.199A–4 and other sections of these regulations are discussed in section J, *Anticipated impacts on administrative and compliance costs,* of this analysis. The Treasury Department and the IRS request comments regarding these and other potential costs arising from the regulations.

G. Economic Analysis of Proposed § 1.199A–5

1. Background

Section 199A provides a deduction of up to 20 percent of the taxpayer's income from qualifying trades or businesses. In the absence of legislative and regulatory constraints, taxpayers have an incentive to receive labor income as income earned as a an independent contractor or through ownership of an RPE, even though this income may not derive from the risk-bearing or decision-making efficiencies that are unique to being an independent contractor or to owning an equity interest in an RPE. The Act provided several provisions that bear on this distinction.

Proposed § 1.199A–5 provides guidance on what trades or businesses would be characterized as an SSTB under each type of services trade or business listed in the legislative text. In addition, proposed § 1.199A–5 provides an exception to the SSTB exclusion if the trade or business only earns a small fraction of its gross income from specified service activities (de minimis exception). Finally, the proposed regulations state that former employees providing services as independent contractors to their former employer will be presumed to be acting as employees unless they provide evidence that they are providing services in a capacity other than an employee.

An alternative approach to the de minimis exception would be to require businesses or their owners to trigger the SSTB exclusion regardless of the share of gross income from specified service activities. The Treasury Department concluded that providing a de minimis exception is necessary to avoid very small amounts of SSTB activity within a trade or business making the entire trade or business ineligible for the deduction, an outcome that is inefficient in the context of section 199A.

2. Anticipated Benefits of Proposed § 1.199A–5

The Treasury Department and the IRS expect that proposed § 1.199A–5 will implement the 199A deduction in an economically efficient manner. To this end, proposed § 1.199A–5 clarifies the definition of an SSTB. In the absence of such clarification, similarly situated taxpayers might interpret the legislative text differently, leading some taxpayers to invest in particular businesses under the assumption income earned from that entity was eligible for the deduction while other taxpayers might forgo that investment due to the opposite assumption. These disparate investment signals generate economic inefficiencies. The proposed regulations reduce this inefficiency relative to a scenario in which no regulation providing a de minimus exception was issued.

Furthermore, in the absence of the proposed regulations, some owners of businesses may find it advantageous to separate their business activity into SSTB and non-SSTB businesses in order to receive the section 199A deduction on their non-SSTB activity. The proposed regulations would disallow this behavior by stating that a taxpayer that provides property or services to an SSTB that is commonly-owned will have the portion of property or services provided to the SSTB treated as attributable to an SSTB. Additionally without these regulations, some businesses may have an incentive to pay a portion of their employees as independent contractors. Either of these actions would entail some loss of economic efficiency due to changes in businesses' decision-making structures based on tax incentives. They may also inefficiently provide incentives to change employment relationships in favor of independent contractors. The proposed regulations help to avoid these sources of inefficiency.

3. Anticipated Costs of Proposed § 1.199A–5 Relative to the Baseline

In addition to the statutory threshold amount, below which SSTB status is not relevant, proposed § 1.199A–5 provides a de minimis rule with tiered-thresholds of gross revenues arising from specified service activity in determining whether a trade or business with a smaller amount of specified service activity is classified as an SSTB. This threshold may cause businesses near the cutoff to decrease their specified service activities or increase their non-specified service activities to avoid being classified as an SSTB. Additionally, the de minimis rule may encourage smaller entities engaged in SSTBs to merge with larger entities not engaged in an SSTB. The economic costs of these mergers are difficult to quantify.

Changes to the collective paperwork burden arising from § 1.199A–5 and other sections of these regulations are discussed in section J, *Anticipated impacts on administrative and compliance costs,* of this analysis. The Treasury Department and IRS request comment regarding these and other potential costs arising from the regulations.

H. Economic Analysis of Proposed § 1.199A–6

1. Background

The 199A deduction is reduced below 20 percent for some businesses and taxpayers. The attributes that determine any such reduction must be determined by taxpayers claiming the section 199A deduction. Proposed § 1.199A–6 provides rules for RPEs, PTPs, trusts, and estates relevant to making these determinations. In particular, RPEs are required to calculate and report their owners' QBI, SSTB status, W–2 wages, UBIA of qualified property, REIT dividends, and PTP income. Similarly, PTPs must calculate and report their owners' QBI, SSTB status, REIT dividends, and other PTP income.

2. Anticipated Benefits of Proposed § 1.199A–6

The Treasury Department and IRS expect that proposed § 1.199A–6 will implement the 199A deduction in an economically efficient manner. As with other proposed regulations discussed in this Analyses, a principal benefit of proposed § 1.199A–6 is to increase the likelihood that all taxpayers interpret the statutory rules of section 199A similarly. Additionally, we expect that requiring RPEs to determine and report the information necessary to compute the section 199A deduction will result in a more accurate and uniform application of the regulations and statute relative to an alternative approach under which individual owners would most likely determine these items.

3. Anticipated Costs of Proposed § 1.199A–6 Relative to the Baseline

The Treasury Department and the IRS do not anticipate any meaningful economic distortions to be induced by proposed § 1.199A–6, and request comment on these estimated impacts. However, changes to the collective paperwork burden arising from this and other sections of these regulations are discussed in section J, *Anticipated impacts on administrative and compliance costs,* of this analysis.

I. Economic Analysis of Proposed § 1.643(f)–1

1. Background

Proposed § 1.643(f)–1 provides that taxpayers cannot set up multiple trusts in certain cases with a principal purpose of tax avoidance, which would include the avoidance of the statutory threshold amounts under section 199A.

2. Anticipated Benefits of Proposed § 1.643(f)–1 Relative to the Baseline

The Treasury Department and IRS expect that the proposed § 1.643(f)–1 will implement the 199A deduction in an economically efficient manner. Because proposed § 1.643(f)–1 defines the manner in which trusts are subject to the threshold amount where the statute is silent, the Treasury Department and the IRS anticipate that the proposed regulations will lead to fewer resources being devoted to setting up trusts in attempts to avoid the threshold amount rules under section 199A. If multiple trusts have substantially the same grantors and beneficiaries, and a principal purpose for establishing such trusts or contributing additional cash or other property to such trusts is the avoidance of Federal income tax, then the various trusts would be generally considered one trust, including for section 199A purposes.

3. Anticipated Costs of Proposed § 1.643(f)–1 Relative to the Baseline

The Treasury Department and the IRS do not anticipate any meaningful economic distortions to be induced by proposed § 1.643(f)–1, and request comment on these estimated impacts. However, changes to the collective paperwork burden arising from this and other sections of these regulations are discussed in section J, *Anticipated impacts on administrative and compliance costs,* of this analysis.

J. Anticipated Impacts on Administrative and Compliance Costs

1. Discussion

The proposed regulations have a number of effects on taxpayers' compliance costs. Proposed § 1.199A–2 provides guidance in determining a taxpayer's share of W–2 wages and UBIA of qualified property. The Treasury Department and the IRS expect that this guidance reduces the tax compliance costs of making this determination and reduces uncertainty. In the absence of the proposed regulations, taxpayers would still need to determine how to allocate W–2 wages and UBIA of qualified property, among other calculations. These regulations provide clear instructions for how to do this, simplifying the process of complying with the law.

Proposed § 1.199A–4 requires that owners who decide to aggregate their trades or businesses report the aggregation annually. This reporting requirement adds to the tax compliance burden of these owners. For owners who consider aggregating, these regulations increase compliance costs because the owners must calculate their deduction for both disaggregated and aggregated trades or businesses to make the aggregation decision. These additional compliance costs would be voluntary and accrue only to owners who find it beneficial to aggregate for the purposes of calculating their section 199A deduction.

Proposed § 1.199A–5 includes a requirement for former employees working as independent contractors for their former employer to show that their employment relationship has changed in order to be eligible for the section 199A deduction. The burden to substantiate employment status exists without these proposed regulations; however, the proposed regulation may increase these individuals' compliance costs slightly.

Proposed § 1.199A–6 specifies that RPEs must report relevant section 199A information to owners. Due to these entity reporting requirements, the proposed regulations will increase compliance costs for RPEs. These entities will need to keep records of new information relevant to the calculation of their owners' section 199A deduction, such as QBI, W–2 wages, SSTB status, and UBIA of qualified property. This recordkeeping is costly. Without these regulations, it is likely that only some RPEs would engage in this record keeping.

Proposed § 1.199A–6 reduces the compliance burden on many individuals that own RPEs relative a scenario in which no regulations were issued or regulatory alternatives that assigned each owner of an RPE the responsibility to acquire the required information were issued without any requirement for the RPE to provide such information. Under the proposed regulations, owners will receive information pertaining to the section 199A deduction from the RPE, such as whether a given trade or business is an SSTB, whereas in the alternate they could have been required to make such determinations themselves.

Overall, it is likely to be more efficient for RPEs, rather than individual owners, to keep records of section 199A deduction information. Therefore, the Treasury Department and the IRS expect that proposed § 1.199A–6 will reduce compliance costs on net and relative to these alternative scenarios.

2. Estimated Effect on Compliance Costs

As explained above, key provisions of proposed §§ 1.199A–1 through 1.199A–6 will reduce compliance costs that taxpayers would likely have incurred in the absence of the proposed rule. Most notably, the *de minimis* rule of proposed § 1.199A–5 provides that a trade or business will not be considered to be an SSTB merely because it provides a small amount of services in a specified service activity. This provision is expected to reduce compliance costs associated with section 199A for millions of U.S. businesses. In addition, the aggregation rules will reduce overall costs for taxpayers because some taxpayers would restructure their business arrangements in order to receive the benefit of the deduction. These and other discretionary choices by the Treasury Department and the IRS in the proposed rule will substantially reduce taxpayers' compliance costs.

The Treasury Department and the IRS also assessed the provisions of the proposed rule that could increase compliance burdens. Estimates of the change in annual reporting burden associated with these proposed regulations are presented here and in further detail in the Paperwork Reduction Act (PRA) section. The Treasury Department and the IRS estimate a gross (not net) increase in total reporting burden of 25 million hours annually. The estimates primarily reflect two effects of the regulations. First, the Treasury Department and the IRS project that approximately 1.2 million individuals with more than one directly owned or pass-through business who voluntarily choose to aggregate will spend 0.66 hours annually complying with proposed § 1.199A–4. Second, the Treasury Department and the IRS project that—in complying with the proposed § 1.199A–6 requirement to report relevant section 199A information to their approximately 8.8 million owners—RPEs will spend 2.75 hours annually per owner. These estimates do not include the decrease in compliance costs to individuals who would no longer find it necessary to compute the quantities detailed in proposed § 1.199A–6 because they would receive this information from each RPE. Nor do these estimates reflect the decrease in compliance costs outlined above.

Valuations of the burden hours of $39/hour in the case of individuals making aggregation decisions and $53/hour in the case of RPEs reporting section 199A information lead to a PRA-based estimate of the gross reporting annualized costs to taxpayers of approximately $1.3 billion over ten years; this estimate does not account for the provisions of the proposed regulations that will substantially reduce compliance costs. Because these estimates assume that the costs are the same each year, the annualized costs do not vary with the discount rate. It is possible that costs will be higher in the first years that the deduction is allowed and lower in future years once taxpayers have more experience with the calculations and reporting requirements associated with the deduction. Finally, the estimates reflect data for entities of a size and form expected to be impacted by section 199A. More specifically, because of the scope of the section 199A deduction, the Treasury Department and the IRS expect the majority of affected entities to be largely small, and medium in size.

The Treasury Department and the IRS solicit comments on the assumptions and the methodology used to calculate the compliance costs imposed by the proposed regulations relative to the baseline. This includes, among other things, assumptions and methodology regarding the reporting burden per respondent, the number of impacted entities, and the hourly labor cost estimate for reporting.

Annualized monetized effect on compliance costs from proposed regulations	Years 2018 to 2027 (3% discount rate, millions $2018)	Years 2018 to 2027 (7% discount rate, millions $2018)
Estimated Gross Costs	$1,317	$1,317.
Estimated Savings	Not quantified	Not quantified.

K. Executive Order 13771

The Treasury Department and the IRS request comment on the Executive Order 13771 designation for these proposed regulations. Details on the estimated costs of the proposed regulations can be found in this economic analysis.

II. Regulatory Flexibility Act

It is hereby certified that the collections of information in proposed §§ 1.199A–4 and 1.199A–6 will not have a significant economic impact on a substantial number of small entities. Although the Treasury Department and the IRS believe that the proposed regulations may affect a substantial number of small entities, the economic impact on small entities as a result of the collections of information in this notice of proposed rulemaking is not expected to be significant.

The collection in proposed § 1.199A–4 may apply to individuals and certain trusts or estates that can claim the section 199A deduction and that choose to aggregate two or more trades or businesses for purposes of section 199A. If a taxpayer chooses to aggregate its trades or businesses, the taxpayer, must include an attachment to its tax return identifying and describing each trade or business aggregated, describing changes to the aggregated group, and providing other information as the Commissioner may require in forms, instructions, or other published guidance. RPEs are not subject to the collection in proposed § 1.199A–4 because RPEs are not permitted to aggregate trades or businesses. Aggregation is not required by a person claiming the section 199A deduction, and therefore the collection of information in proposed § 1.199A–4 is required only if the person chooses to aggregate multiple trades or businesses. It is not known how many small entities will choose to aggregate multiple trades or businesses, therefore a number of affected entities is not estimated at this time.

The small entities subject to the collection of information in proposed § 1.199A–6 are business entities formed as estates, trusts, partnerships, or S corporations that conduct, directly or indirectly, one or more trades or businesses. Proposed § 1.199A–6 requires such an entity to attach a statement describing the QBI, W–2 wages, and UBIA of qualified property for each separate trade or business to the Schedule K–1 required under existing law to be issued to each beneficiary, partner, or shareholder. Although data is not available to estimate the number of small entities affected by the § 1.199A–6 requirements, the Treasury Department and the IRS believe that number would include a substantial number of small entities.

As discussed elsewhere in this preamble, the reporting burden is estimated at 30 minutes to 20 hours, depending on individual circumstances, with an estimated average of 2.5 hours for all affected entities, regardless of size. The burden on small entities is expected to be at the lower end of the range (30 minutes to 2.5 hours). Using the IRS's taxpayer compliance cost estimates, taxpayers who are self-employed with multiple businesses are estimated to have a monetization rate of $39 per hour. Pass-throughs that issue K–1s have a monetization rate of $53 per hour.

For these reasons, the Treasury Department and the IRS have determined that the collection of information in this notice of proposed rulemaking will not have a significant economic impact. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Notwithstanding this certification, the Treasury Department and the IRS invite comments from interested members of the public on both the number of entities affected and the economic impact on small entities.

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.

Comments and Requests for Public Hearing

The Treasury Department and the IRS request comments on all aspects of the proposed rules.

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. All comments will be available at *www.regulations.gov* or upon request.

Drafting Information

The principal authors of these regulations are Frank J. Fisher, Wendy L. Kribell, Adrienne M. Mikolashek, and Benjamin H. Weaver, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 are amended by adding sectional authorities for §§ 1.199A–1 through 1.199A–6 and § 1.643(f) to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section § 1.199A–1 also issued under 26 U.S.C. 199A(f)(4).

Section § 1.199A–2 also issued under 26 U.S.C. 199A(b)(5), (f)(1)(A), (f)(4), and (h).

Section § 1.199A–3 also issued under 26 U.S.C. 199A(c)(4)(C) and (f)(4.)

Section § 1.199A–4 also issued under 26 U.S.C. 199A(f)(4).

Section § 1.199A–5 also issued under 26 U.S.C. 199A(f)(4).

Section § 1.199A–6 also issued under 26 U.S.C. 199A(f)(1)(B) and (f)(4).

Section 1.643(f) 091 also issued under 26 U.S.C. 643(f).

■ **Par. 2.** Section 1.199A–0 is added to read as follows:

§ 1.199A–0 Table of Contents

This section lists the section headings that appear in §§ 1.199A–1 through 1.199A–6.

(i) Calculation at entity level.
(ii) Allocation among trust or estate and beneficiaries.
(iii) Threshold amount.
(iv) Electing small business trusts.
(v) Anti-abuse rule for creation of multiple trusts to avoid exceeding the threshold amount.
(vi) Example.
(e) Effective/applicability date.
(1) General rule.
(2) Exceptions.
(i) Anti-abuse rules.
(ii) Non-calendar year RPE

■ **Par. 3.** Section 1.199A–1 is added to read as follows:

§ 1.199A–1 Operational rules.

(a) *Overview*—(1) *In general.* This section provides operational rules for calculating the section 199A(a) qualified business income deduction (section 199A deduction) under section 199A of the Internal Revenue Code (Code). This section refers to the rules in §§ 1.199A–2 through 1.199A–6. This paragraph (a) provides an overview of this section. Paragraph (b) of this section provides definitions that apply for purposes of section 199A and §§ 1.199A–1 through 1.199A–6. Paragraph (c) of this section provides computational rules and examples for individuals whose taxable income does not exceed the threshold amount. Paragraph (d) of this section provides computational rules and examples for individuals whose taxable income exceeds the threshold amount. Paragraph (e) of this section provides special rules for purposes of section 199A and §§ 1.199A–1 through 1.199A–6. This section and §§ 1.199A–2 through 1.199A–6 do not apply for purposes of calculating the deduction in section 199A(g) for specified agricultural and horticultural cooperatives.

(2) *Usage of term individual.* For purposes of applying the rules of §§ 1.199A–1 through 1.199A–6, a reference to an individual includes a reference to a trust (other than a grantor trust) or an estate to the extent that the section 199A deduction is determined by the trust or estate under the rules of § 1.199A–6.

(b) *Definitions.* For purposes of section 199A and §§ 1.199A–1 through 1.199A–6, the following definitions apply:

(1) *Aggregated trade or business* means two or more trades or businesses that have been aggregated pursuant to § 1.199A–4.

(2) *Applicable percentage* means, with respect to any taxable year, 100 percent reduced (not below zero) by the percentage equal to the ratio that the taxable income of the individual for the taxable year in excess of the threshold amount, bears to $50,000 (or $100,000 in the case of a joint return).

(3) *Phase-in range* means a range of taxable income, the lower limit of which is the threshold amount, and the upper limit of which is the threshold amount plus $50,000 (or $100,000 in the case of a joint return).

(4) *Qualified business income (QBI)* means the net amount of qualified items of income, gain, deduction, and loss with respect to any trade or business as determined under the rules of § 1.199A–3(b).

(5) *QBI component* means the amount determined under paragraph (d)(2) of this section.

(6) *Qualified PTP income* is defined in § 1.199A–3(c)(3).

(7) *Qualified REIT dividends* are defined in § 1.199A–3(c)(2).

(8) *Reduction amount* means, with respect to any taxable year, the excess amount multiplied by the ratio that the taxable income of the individual for the taxable year in excess of the threshold amount, bears to $50,000 (or $100,000 in the case of a joint return). For purposes of this paragraph (b)(8), the *excess amount* is 20 percent of QBI over the greater of 50 percent of W–2 wages or the sum of 25 percent of W–2 wages plus 2.5 percent of the UBIA of qualified property.

(9) *Relevant passthrough entity (RPE)* means a partnership (other than a PTP) or an S corporation that is owned, directly or indirectly by at least one individual, estate, or trust. A trust or estate is treated as an RPE to the extent it passes through QBI, W–2 wages, UBIA of qualified property, qualified REIT dividends, or qualified PTP income.

(10) *Specified service trade or business (SSTB)* means a specified service trade or business as defined in § 1.199A–5(b).

(11) *Threshold amount* means, for any taxable year beginning before 2019, $157,500 (or $315,000 in the case of a taxpayer filing a joint return). In the case of any taxable year beginning after 2018, the threshold amount is the dollar amount in the preceding sentence increased by an amount equal to such dollar amount, multiplied by the cost-of-living adjustment determined under section 1(f)(3) of the Code for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2017'' for ''calendar year 2016'' in section 1(f)(3)(A)(ii). The amount of any increase under the preceding sentence is rounded as provided in section 1(f)(7) of the Code.

(12) *Total QBI amount* means the net total QBI from all trades or businesses (including the individual's share of QBI from trades or business conducted by RPEs).

(13) *Trade or business* means a section 162 trade or business other than the trade or business of performing services as an employee. In addition, rental or licensing of tangible or intangible property (rental activity) that does not rise to the level of a section 162 trade or business is nevertheless treated as a trade or business for purposes of section 199A, if the property is rented or licensed to a trade or business which is commonly controlled under § 1.199A–4(b)(1)(i) (regardless of whether the rental activity and the trade or business are otherwise eligible to be aggregated under § 1.199A–4(b)(1)).

(14) *Unadjusted basis immediately after acquisition of qualified property* (*UBIA of qualified property*) is defined in § 1.199A–2(c).

(15) *W–2 wages* means a trade or business's W–2 wages properly allocable to QBI as defined in § 1.199A–2(b).

(c) *Computation of the § 199A deduction for individuals with taxable income not exceeding threshold amount*—(1) *In general.* The section 199A deduction is determined for individuals with taxable income for the taxable year that does not exceed the threshold amount by adding 20 percent of the total QBI amount (including QBI attributable to an SSTB) and 20 percent of the combined amount of qualified REIT dividends and qualified PTP income (including the individual's share of qualified REIT dividends, and qualified PTP income from RPEs). That sum is then compared to 20 percent of the amount by which the individual's taxable income exceeds net capital gain. The lesser of these two amounts is the individual's section 199A deduction.

(2) *Carryover rules*—(i) *Negative total QBI amount.* If the total QBI amount is less than zero, the portion of the individual's section 199A deduction related to QBI is zero for the taxable year. The negative total QBI amount is treated as negative QBI from a separate trade or business in the succeeding taxable year of the individual for purposes of section 199A and this section. This carryover rule does not affect the deductibility of the loss for purposes of other provisions of the Code.

(ii) *Negative combined qualified REIT dividends/qualified PTP income.* If the combined amount of REIT dividends and qualified PTP income is less than zero, the portion of the individual's section 199A deduction related to qualified REIT dividends and qualified PTP income is zero for the taxable year. The negative combined amount must be carried forward and used to offset the combined amount of REIT dividends and qualified PTP income in the succeeding taxable year of the individual for purposes of section 199A and this section. This carryover rule does not affect the deductibility of the loss for purposes of other provisions of the Code.

(3) *Examples.* The following examples illustrate the provisions of this paragraph (c). For purposes of these examples, unless indicated otherwise, assume that all of the trades or businesses are trades or businesses as defined in paragraph (b)(1) of this section and all of tax items are effectively connected to a trade or business within the United States within the meaning of section 864(c). Total taxable income does not include the section 199A deduction.

Example 1 to paragraph (c)(3). A, an unmarried individual, owns and operates a computer repair shop as a sole proprietorship. The business generated $100,000 in net taxable income from operations in 2018. A has no capital gains or losses. After allowable deductions not relating to the business, A's total taxable income for 2018 is $81,000. The business's QBI is $100,000, the net amount of its qualified items of income, gain, deduction, and loss. A's section 199A deduction for 2018 is equal to $16,200, the lesser of 20% of A's QBI from the business ($100,000 × 20% = $20,000) and 20% of A's total taxable income for the taxable year ($81,000 × 20% = $16,200).

Example 2 to paragraph (c)(3). Assume the same facts as in *Example 1* of this paragraph (c)(3), except that A also has $7,000 in net capital gain for 2018 and that, after allowable deductions not relating to the business, A's taxable income for 2018 is $74,000. A's taxable income minus net capital gain is $67,000 ($74,000 − $7,000). A's section 199A deduction is equal to $13,400, the lesser of 20% of A's QBI from the business ($100,000 × 20% = $20,000) and 20% of A's total taxable income minus net capital gain for the taxable year ($67,000 × 20% = $13,400).

Example 3 to paragraph (c)(3). B and C are married and file a joint individual income tax return. B earned $500,000 in wages as an employee of an unrelated company in 2018. C owns 100% of the shares of X, an S corporation that provides landscaping services. X generated $100,000 in net income from operations in 2018. X paid C $150,000 in wages in 2018. B and C have no capital gains or losses. After allowable deductions not related to X, B and C's total taxable income for 2018 is $270,000. B's and C's wages are not considered to be income from a trade or business for purposes of the section 199A deduction. Because X is an S corporation, its QBI is determined at the S corporation level. X's QBI is $100,000, the net amount of its qualified items of income, gain, deduction, and loss. The wages paid by X to C are considered to be a qualified item of deduction for purposes of determining X's QBI. The section 199A deduction with respect to X's QBI is then determined by C, X's sole shareholder, and is claimed on the joint return filed by B and C. B and C's section 199A deduction is equal to $20,000, the lesser of 20% of C's QBI from the business ($100,000 × 20% = $20,000) and 20% of B and C's total taxable income for the taxable year ($270,000 × 20% = $54,000).

Example 4 to paragraph (c)(3). Assume the same facts as in *Example 3* of this paragraph (c)(3) except that B also earns $1,000 in qualified REIT dividends and $500 in qualified PTP income in 2018, increasing taxable income to $271,500. B and C's section 199A deduction is equal to $20,300, the lesser of (i) 20% of C's QBI from the business ($100,000 × 20% = $20,000) plus 20% of B's combined qualified REIT dividends and qualified PTP income ($1,500 × 20% = $300) and (ii) 20% of B and C's total taxable for the taxable year ($271,500 × 20% = $54,300).

(d) *Computation of the § 199A deduction for individuals with taxable income above threshold amount*—(1) *In general.* The section 199A deduction is determined for individuals with taxable income for the taxable year that exceeds the threshold amount by adding the QBI component and 20 percent of the combined amount of qualified REIT dividends and qualified PTP income (including the individual's share of qualified REIT dividends and qualified PTP income from RPEs). That sum is then compared to 20 percent of the amount by which the individual's taxable income exceeds net capital gain. The lesser of these two amounts is the individual's section 199A deduction.

(2) *QBI component.* An individual with taxable income for the taxable year that exceeds the threshold amount determines the QBI component using the following computational rules, which are to be applied in the order they appear.

(i) *SSTB exclusion.* If the individual's taxable income is within the phase-in range, then only the applicable percentage of QBI, W–2 wages, and UBIA of qualified property for each SSTB is taken into account for purposes of determining the individual's section 199A deduction. If the individual's taxable income exceeds the phase-in range, then none of the individual's share of QBI, W–2 wages, or UBIA of qualified property attributable to an SSTB may be taken into account for purposes of determining the individual's section 199A deduction.

(ii) *Aggregated trade or business.* If an individual chooses to aggregate trades or businesses under the rules of § 1.199A–4, the individual must combine the QBI, W–2 wages, and UBIA of qualified property of each trade or business within an aggregated trade or business prior to applying the W–2 wages and UBIA of qualified property limitations described in paragraph (d)(2)(iv) of this section.

(iii) *Netting and Carryover*—(A) *Netting.* If an individual's QBI from at least one trade or business is less than zero, the individual must offset the QBI attributable to each trade or business that produced net positive QBI with the QBI from each trade or business that produced net negative QBI in proportion to the relative amounts of net QBI in the trades or businesses with positive QBI. The adjusted QBI is then used in paragraph (d)(2)(iv) of this section. The W–2 wages and UBIA of qualified property from the trades or businesses which produced net negative QBI are not taken into account for purposes of this paragraph (d) and are not carried over to the subsequent year.

(B) *Carryover of negative total QBI amount.* If an individual's QBI from all trades or businesses combined is less than zero, the QBI component is zero for the taxable year. This negative amount is treated as negative QBI from a separate trade or business in the succeeding taxable year of the individual for purposes of section 199A and this section. This carryover rule does not affect the deductibility of the loss for purposes of other provisions of the Code. The W–2 wages and UBIA of qualified property from the trades or businesses which produced net negative QBI are not taken into account for purposes of this paragraph (d) and are not carried over to the subsequent year.

(iv) *QBI component calculation*—(A) *General rule.* Except as provided in paragraph (d)(iv)(B) of this section, the QBI component is the sum of the amounts determined under this paragraph (d)(2)(iv)(A) for each trade or business. For each trade or business (including trades or businesses operated through RPEs) the individual must determine the lesser of—

(*1*) 20 percent of the QBI for that trade or business; or

(*2*) The greater of—

(*i*) 50 percent of W–2 wages with respect to that trade or business, or

(*ii*) the sum of 25 percent of W–2 wages with respect to that trade or business plus 2.5 percent of the UBIA of qualified property with respect to that trade or business.

(B) *Taxpayers with taxable income within phase-in range.* If the individual's taxable income is within the phase-in range and the amount determined under paragraph (d)(2)(iv)(A)(*2*) of this section for a trade or business is less than the amount determined under paragraph (d)(2)(iv)(A)(*1*) of this section for that trade or business, the amount determined under paragraph (d)(2)(iv)(A) of this section for such trade or business is modified. Instead of the amount determined under paragraph (d)(2)(iv)(A)(*2*) of this section, the QBI component for the trade or business is the amount determined under paragraph (d)(2)(iv)(A)(*1*) of this section reduced by the reduction amount as defined in paragraph (b)(8) of this section. This reduction amount does not apply if the amount determined in paragraph (d)(2)(iv)(A)(*2*) of this section is greater than the amount determined under paragraph (d)(2)(iv)(A)(*1*) of this section (in which circumstance the QBI component for the trade or business will be the unreduced amount determined in paragraph (d)(2)(iv)(A)(*1*) of this section).

(3) *Negative combined qualified REIT dividends/qualified PTP income.* If the combined amount of REIT dividends and qualified PTP income is less than zero, the portion of the individual's section 199A deduction related to qualified REIT dividends and qualified PTP income is zero for the taxable year. The negative combined amount must be carried forward and used to offset the combined amount of REIT dividends/qualified PTP income in the succeeding taxable year of the individual for purposes of section 199A and this section. This carryover rule does not affect the deductibility of the loss for purposes of other provisions of the Code.

(4) *Examples.* The following examples illustrate the provisions of this paragraph (d). For purposes of these examples, unless indicated otherwise, assume that all of the trades or businesses are trades or businesses as defined in paragraph (b)(13) of this section, none of the trades or businesses are SSTBs as defined in paragraph (b)(10) of this section and § 1.199A–5(b); and all of the tax items associated with the trades or businesses are effectively connected to a trade or business within the United States within the meaning of section 864(c). Also assume that the taxpayers report no capital gains or losses or other tax items not specified in the examples. Total taxable income does not include the section 199A deduction.

Example 1 to paragraph (d)(4). D, an unmarried individual, owns several parcels of land that D manages and which are leased to several suburban airports for parking lots. The business generated $1,000,000 of QBI in 2018. The business paid no wages and the property was not qualified property because it was not depreciable. After allowable deductions unrelated to the business, D's total taxable income for 2018 is $980,000. Because D's taxable income exceeds the applicable threshold amount, D's section 199A deduction is subject to the W–2 wage and UBIA of qualified property limitations. D's section 199A deduction is limited to zero because the business paid no wages and held no qualified property.

Example 2 to paragraph (d)(4). Assume the same facts as in *Example 1* of this paragraph (d)(4), except that D developed the land parcels in 2019, expending a total of $10,000,000 to build parking structures on each of the parcels, all of which is depreciable. During 2020, D leased the parking structures and the land to the suburban airports. D reports $4,000,000 of QBI for 2020. After allowable deductions unrelated to the business, D's total taxable income for 2020 is $3,980,000. Because D's taxable income is above the threshold amount, the QBI component of D's section 199A deduction is subject to the W–2 wage and UBIA of qualified property limitations. Because the business has no W–2 wages, the QBI component of D's section 199A deduction will be limited to the lesser of 20% of the business's QBI or 2.5% of its UBIA of qualified property. Twenty percent of the $4,000,000 of QBI is $800,000. Two and one-half percent of the $10,000,000 UBIA of qualified property is $250,000. The QBI component of D's section 199A deduction is thus limited to $250,000. D's section 199A deduction is equal to the lesser of (i) 20% of the QBI from the business as limited ($250,000) or (ii) 20% of D's taxable income ($3,980,000 × 20% = $796,000). Therefore, D's section 199A deduction for 2020 is $250,000.

Example 3 to paragraph (d)(4). E, an unmarried individual, is a 30% owner of LLC, which is classified as a partnership for Federal income tax purposes. In 2018, the LLC has a single trade or business and reported QBI of $3,000,000. The LLC paid total W–2 wages of $1,000,000, and its total UBIA of qualified property is $100,000. E is allocated 30% of all items of the partnership. For the 2018 taxable year, E reports $900,000 of QBI from the LLC. After allowable deductions unrelated to LLC, E's taxable income is $880,000. Because E's taxable income is above the threshold amount, the QBI component of E's section 199A deduction will be limited to the lesser of 20% of E's share of LLC's QBI or the greater of the W–2 wage or UBIA of qualified property limitations. Twenty percent of E's share of QBI of $900,000 is $180,000. The W–2 wage limitation equals 50% of E's share of the LLC's wages ($300,000) or $150,000. The UBIA of qualified property limitation equals $75,750, the sum of 25% of E's share of LLC's wages ($300,000) or $75,000 plus 2.5% of E's share of UBIA of qualified property ($30,000) or $750. The greater of the limitation amounts ($150,000 and $75,750) is $150,000. The QBI component of E's section 199A deduction is thus limited to $150,000, the lesser of 20% of QBI ($180,000) and the greater of the limitations amounts ($150,000). E's section 199A deduction is equal to the lesser of 20% of the QBI from the business as limited ($150,000) or 20% of E's taxable income ($880,000 × 20% = $176,000). Therefore, E's section 199A deduction is $150,000 for 2018.

Example 4 to paragraph (d)(4). F, an unmarried individual, owns a 50% interest in Z, an S corporation for Federal income tax purposes that conducts a single trade or business. In 2018, Z reported QBI of $6,000,000. Z paid total W–2 wages of $2,000,000, and its total UBIA of qualified property is $200,000. For the 2018 taxable year, F reports $3,000,000 of QBI from Z. F is not an employee of Z and receives no wages or reasonable compensation from Z. After allowable deductions unrelated to Z and a deductible qualified net loss from a PTP of ($10,000), F's taxable income is $1,880,000. Because F's taxable income is above the threshold amount, the QBI component of F's section 199A deduction will be limited to the lesser of 20% of F's share of Z's QBI or (ii) the greater of the W–2 wage and UBIA of qualified property limitations. Twenty percent of F's share of QBI of $3,000,000 is $600,000. The W–2 wage limitation equals 50% of F's share of Z's W–2 wages ($1,000,000) or $500,000. The UBIA of qualified property limitation equals $252,500, the sum of 25% of F's share of Z's W–2 wages ($1,000,000) or $250,000 plus 2.5% of E's share of UBIA of qualified property ($100,000) or $2,500. The greater of the limitation amounts ($500,000 and $252,500) is $500,000. The QBI component of F's section 199A deduction is thus limited to $500,000, the lesser of 20% of QBI ($600,000) and the greater of the limitations amounts ($500,000). F reported a qualified loss from a PTP and has no qualified REIT dividend. F does not net the ($10,000) loss against QBI. Instead, the portion of F's section 199A deduction related to qualified REIT dividends and qualified PTP income is zero for 2018. F's section is 199A deduction is equal to the lesser of 20% of the QBI from the business as limited ($500,000) or 20% of F's taxable income over net capital gain ($1,880,000 × 20% = $376,000). Therefore, F's section 199A deduction is $376,000 for 2018. F must also carry forward the $(10,000) qualified loss from a PTP to be netted against F's qualified REIT dividends and qualified PTP income in the succeeding taxable year.

Example 5 to paragraph (d)(4). Phase-in range. (i) B and C are married and file a joint individual income tax return. B is a shareholder in M, an entity taxed as an S corporation for Federal income tax purposes that conducts a single trade or business. M holds no qualified property. B's share of the M's QBI is $300,000 in 2018. B's share of the W–2 wages from M in 2018 is $40,000. C earns wage income from employment by an unrelated company. After allowable deductions unrelated to M, B and C's taxable income for 2018 is $375,000. B and C are within the phase-in range because their taxable income exceeds the applicable threshold amount, $315,000, but does not exceed the threshold amount plus $100,000, or $415,000. Consequently, the QBI component of B and C's section 199A deduction may be limited by the W–2 wage and UBIA of qualified property limitations but the limitations will be phased in.

(ii) The UBIA of qualified property limitation amount is zero because M does not hold qualified property. B and C must apply the W–2 wage limitation by first determining 20% of B's share of M's QBI. Twenty percent of B's share of M's QBI of $300,000 is

$60,000. Next, B and C must determine 50% of B's share of M's W–2 wages. Fifty percent of B's share of M's W–2 wages of $40,000 is $20,000. Because 50% of B's share of M's W–2 wages ($20,000) is less than 20% of B's share of M's QBI ($60,000), B and C must determine the QBI component of their section 199A deduction by reducing 20% of B's share of M's QBI by the reduction amount.

(iii) B and C are 60% through the phase-in range (that is, their taxable income exceeds the threshold amount by $60,000 and their phase-in range is $100,000). B and C must determine the excess amount, which is the excess of 20% of B's share of M's QBI, or $60,000, over 50% of B's share of M's W–2 wages, or $20,000. Thus, the excess amount is $40,000. The reduction amount is equal to 60% of the excess amount, or $24,000. Thus, the QBI component of B and C's section 199A deduction is equal to $36,000, 20% of B's $300,000 share M's QBI (that is, $60,000), reduced by $24,000. B and C's section 199A deduction is equal to the lesser of 20% of the QBI from the business as limited ($36,000) or (ii) 20% of B and C's taxable income ($375,000 × 20% = $75,000). Therefore, B and C's section 199A deduction is $36,000 for 2018.

Example 6 to paragraph (d)(4). (i) Assume the same facts as in *Example 5 to paragraph (d)(4),* except that M was engaged in an SSTB. Because B and C are within the phase-in range, B must reduce the QBI and W–2 wages allocable to B from M to the applicable percentage of those items. B and C's applicable percentage is 100% reduced by the percentage equal to the ratio that their taxable income for the taxable year ($375,000) exceeds their threshold amount ($315,000), or $60,000, bears to $100,000. Their applicable percentage is 40%. The applicable percentage of B's QBI is ($300,000 × 40% =) $120,000, and the applicable percentage of B's share of W–2 wages is ($40,000 × 40% =) $16,000. These reduced numbers must then be used to determine how B's section 199A deduction is limited.

(ii) B and C must apply the W–2 wage limitation by first determining 20% of B's share of M's QBI as limited by paragraph (i) of this example. Twenty percent of B's share of M's QBI of $120,000 is $24,000. Next, B and C must determine 50% of B's share of M's W–2 wages. Fifty percent of B's share of M's W–2 wages of $16,000 is $8,000. Because 50% of B's share of M's W–2 wages ($8,000) is less than 20% of B's share of M's QBI ($24,000), B and C's must determine the QBI component of their section 199A deduction by reducing 20% of B's share of M's QBI by the reduction amount.

(iii) B and C are 60% through the phase-in range (that is, their taxable income exceeds the threshold amount by $60,000 and their phase-in range is $100,000). B and C must determine the excess amount, which is the excess of 20% of B's share of M's QBI, as adjusted in paragraph (i) of this example or $24,000, over 50% of B's share of M's W–2 wages, as adjusted in paragraph (i) of this example, or $8,000. Thus, the excess amount is $16,000. The reduction amount is equal to 60% of the excess amount or $9,600. Thus, the QBI component of B and C's section 199A deduction is equal to $14,400, 20% of B's share M's QBI of $24,000, reduced by $9,600. B and C's section 199A deduction is equal to the lesser of 20% of the QBI from the business as limited ($14,400) or 20% of B's and C's taxable income ($375,000 × 20% = $75,000). Therefore, B and C's section 199A deduction is $14,400 for 2018.

Example 7 to paragraph (d)(4). (i) F, an unmarried individual, owns as a sole proprietor 100 percent of three trades or businesses, Business X, Business Y, and Business Z. None of the businesses hold qualified property. F does not aggregate the trades or businesses under § 1.199A–4. For taxable year 2018, Business X generates $1 million of QBI and pays $500,000 of W–2 wages with respect to the business. Business Y also generates $1 million of QBI but pays no wages. Business Z generates $2,000 of QBI and pays $500,000 of W–2 wages with respect to the business. F also has $750,000 of wage income from employment with an unrelated company. After allowable deductions unrelated to the businesses, F's taxable income is $2,722,000.

(ii) Because F's taxable income is above the threshold amount, the QBI component of F's section 199A deduction is subject to the W–2 wage and UBIA of qualified property limitations. These limitations must be applied on a business-by-business basis. None of the businesses hold qualified property, therefore only the 50% of W–2 wage limitation must be calculated. Because QBI from each business is positive, F applies the limitation by determining the lesser of 20% of QBI and 50% of W–2 wages for each business. For Business X, the lesser of 20% of QBI ($1,000,000 × 20 percent = $200,000) and 50% of Business X's W–2 wages ($500,000 × 50% = $250,000) is $200,000. Business Y pays no W–2 wages. The lesser of 20% of Business Y's QBI ($1,000,000 × 20% = $200,000) and 50% of its W–2 wages (zero) is zero. For Business Z, the lesser of 20% of QBI ($2,000 × 20% = $400) and 50% of W–2 wages ($500,000 × 50% = $250,000) is $400.

(iii) Next, F must then combine the amounts determined in paragraph (ii) of this example and compare that sum to 20% of F's taxable income. The lesser of these two amounts equals F's section 199A deduction. The total of the combined amounts in paragraph (ii) is $200,400 ($200,000 + 0 + 400). Twenty percent of F's taxable income is $544,400 ($2,722,000 × 20%). Thus, F's section 199A deduction for 2018 is $200,400.

Example 8 to paragraph (d)(4). (i) Assume the same facts as in *Example 7* of this paragraph (d)(4), except that F aggregates Business X, Business Y, and Business Z under the rules of § 1.199A–4.

(ii) Because F's taxable income is above the threshold amount, the QBI component of F's section 199A deduction is subject to the W–2 wage and UBIA of qualified property limitations. Because the businesses are aggregated, these limitations are applied on an aggregated basis. None of the businesses holds qualified property, therefore only the W–2 wage limitation must be calculated. F applies the limitation by determining the lesser of 20% of the QBI from the aggregated businesses, which is $400,400 ($2,002,000 × 20%) and 50% of W–2 wages from the aggregated businesses, which is $500,000 ($1,000,000 × 50%). F's section 199A deduction is equal to the lesser of $400,400 and 20% of F's taxable income ($2,722,000 × 20% = $544,400). Thus, F's section 199A deduction for 2018 is $400,400.

Example 9 to paragraph (d)(4). (i) Assume the same facts as in *Example 7* of this paragraph (d)(4), except that for taxable year 2018, Business Z generates a loss that results in ($600,000) of negative QBI and pays $500,000 of W–2 wages. After allowable deductions unrelated to the businesses, F's taxable income is $2,120,000. Because Business Z had negative QBI, F must offset the positive QBI from Business X and Business Y with the negative QBI from Business Z in proportion to the relative amounts of positive QBI from Business X and Business Y. Because Business X and Business Y produced the same amount of positive QBI, the negative QBI from Business Z is apportioned equally among Business X and Business Y. Therefore, the adjusted QBI for each of Business X and Business Y is $700,000 ($1 million plus 50% of the negative QBI of $600,000). The adjusted QBI in Business Z is $0, because its negative QBI has been fully apportioned to Business X and Business Y.

(ii) Because F's taxable income is above the threshold amount, the QBI component of F's section 199A deduction is subject to the W–2 wage and UBIA of qualified property limitations. These limitations must be applied on a business-by-business basis. None of the businesses hold qualified property, therefore only the 50% of W–2 wage limitation must be calculated. For Business X, the lesser of 20% of QBI ($700,000 × 20% = $140,000) and 50% of W–2 wages ($500,000 × 50% = $250,000) is $140,000. Business Y pays no W–2 wages. The lesser of 20% of Business Y's QBI ($700,000 × 20% = $140,000) and 50% of its W–2 wages (zero) is zero.

(iii) F must combine the amounts determined in paragraph (ii) of this example and compare the sum to 20% of taxable income. F's section 199A deduction equals the lesser of these two amounts. The combined amount from paragraph (ii) of this example is $140,000 ($140,000 + $0) and 20% of F's taxable income is $424,000 ($2,120,000 × 20%). Thus, F's section 199A deduction for 2018 is $140,000. There is no carryover of any loss into the following taxable year for purposes of section 199A.

Example 10 to paragraph (d)(4). (i) Assume the same facts as in *Example 9* of this paragraph (d)(4), except that F aggregates Business X, Business Y, and Business Z under the rules of § 1.199A–4.

(ii) Because F's taxable income is above the threshold amount, the QBI component of F's section 199A deduction is subject to the W–2 wage and UBIA of qualified property limitations. Because the businesses are aggregated, these limitations are applied on an aggregated basis. None of the businesses holds qualified property, therefore only the W–2 wage limitation must be calculated. F applies the limitation by determining the lesser of 20% of the QBI from the aggregated businesses ($1,400,000 × 20% = $280,000) and 50% of W–2 wages from the aggregated businesses ($1,000,000 × 50% = $500,000), or $280,000. F's section 199A deduction is equal to the lesser of $280,000 and 20% of F's taxable income ($2,120,000 × 20% = $424,000). Thus, F's section 199A deduction for 2018 is $280,000. There is no carryover of any loss into the following taxable year for purposes of section 199A.

Example 11 to paragraph (d)(4). (i) Assume the same facts as in *Example 7* of this paragraph (d)(4), except that Business Z generates a loss that results in ($2,150,000) of negative QBI and pays $500,000 of W–2 wages with respect to the business in 2018. Thus, F has a negative combined QBI of ($150,000) when the QBI from all of the businesses are added together ($1 million plus $1 million minus the loss of ($2,150,000)). Because F has a negative combined QBI for 2018, F has no section 199A deduction with respect to any trade or business for 2018. Instead, the negative combined QBI of ($150,000) carries forward and will be treated as negative QBI from a separate trade or business for purposes of computing the section 199A deduction in the next taxable year. None of the W–2 wages carry forward. However, for income tax purposes, the $150,000 loss may offset F's $750,000 of wage income (assuming the loss is otherwise allowable under the Code).

(ii) In taxable year 2019, Business X generates $200,000 of net QBI and pays $100,000 of W–2 wages with respect to the business. Business Y generates $150,000 of net QBI but pays no wages. Business Z generates a loss that results in ($120,000) of negative QBI and pays $500 of W–2 wages with respect to the business. F also has $750,000 of wage income from employment with an unrelated company. After allowable deductions unrelated to the businesses, F's taxable income is $960,000. Pursuant to paragraph (d)(2)(iii)(B) of this section, the ($150,000) of negative QBI from 2018 is treated as arising in 2019 from a separate trade or business. Thus, F has overall net QBI of $80,000 when all trades or businesses are taken together ($200,000 plus $150,000 minus $120,000 minus the carryover loss of $150,000). Because Business Z had negative QBI and F also has a negative QBI carryover amount, F must offset the positive QBI from Business X and Business Y with the negative QBI from Business Z and the carryover amount in proportion to the relative amounts of positive QBI from Business X and Business Y. Because Business X produced 57.14% of the total QBI from Business X and Business Y, 57.14% of the negative QBI from Business Z and the negative QBI carryforward must be apportioned to Business X, and the remaining 42.86% allocated to Business Y. Therefore, the adjusted QBI in Business X is $45,722 ($200,000 minus 57.14% of the loss from Business Z ($68,568), minus 57.14% of the carryover loss ($85,710)). The adjusted QBI in Business Y is $34,278 ($150,000, minus 42.86% of the loss from Business Z ($51,432) minus one third of the carryover loss ($64,290)). The adjusted QBI in Business Z is $0, because its negative QBI has been apportioned to Business X and Business Y.

(iii) Because F's taxable income is above the threshold amount, the QBI component of F's section 199A deduction is subject to the W–2 wage and UBIA of qualified property limitations. These limitations must be applied on a business-by-business basis. None of the businesses hold qualified property, therefore only the 50% of W–2 wage limitation must be calculated. For Business X, 20% of QBI is $9,144 ($45,722 × 20%) and 50% of W–2 wages is $50,000 ($100,000 × 50%), so the lesser amount is $9,144. Business Y pays no W–2 wages. Twenty percent of Business Y's QBI is $6,856 ($34,278 × 20%) and 50% of its W–2 wages (zero) is zero, so the lesser amount is zero.

(iv) F must then compare the combined amounts determined in paragraph (iii) of this example to 20% of F's taxable income. The section 199A deduction equals the lesser of these amounts. F's combined amount from paragraph (iii) of this example is $9,144 ($9,144 plus zero) and 20% of F's taxable income is $192,000 ($960,000 × 20%) Thus, F's section 199A deduction for 2019 is $9,144. There is no carryover of any negative QBI into the following taxable year for purposes of section 199A.

Example 12 to paragraph (d)(4). (i) Assume the same facts as in *Example 11* of this paragraph (d)(4), except that F aggregates Business X, Business Y, and Business Z under the rules of § 1.199A–4. For 2018, F's QBI from the aggregated trade or business is ($150,000). Because F has a combined negative QBI for 2018, F has no section 199A deduction with respect to any trade or business for 2018. Instead, the negative combined QBI of ($150,000) carries forward and will be treated as negative QBI from a separate trade or business for purposes of computing the section 199A deduction in the next taxable year. However, for income tax purposes, the $150,000 loss may offset taxpayer's $750,000 of wage income (assuming the loss is otherwise allowable under the Code).

(ii) In taxable year 2019, F will have QBI of $230,000 and W–2 wages of $100,500 from the aggregated trade or business. F also has $750,000 of wage income from employment with an unrelated company. After allowable deductions unrelated to the businesses, F's taxable income is $960,000. F must treat the negative QBI carryover loss ($150,000) from 2018 as a loss from a separate trade or business for purposes of section 199A. This loss will offset the positive QBI from the aggregated trade or business, resulting in an adjusted QBI of $80,000 ($230,000 − $150,000).

(iii) Because F's taxable income is above the threshold amount, the QBI component of F's section 199A deduction is subject to the W–2 wage and UBIA of qualified property limitations. These limitations must be applied on a business-by-business basis. None of the businesses hold qualified property, therefore only the 50% of W–2 wage limitation must be calculated. For the aggregated trade or business, the lesser of 20% of QBI ($80,000 × 20% = $16,000) and 50% of W–2 wages ($100,500 × 50% = $50,250) is $16,000. F's section 199A deduction equals the lesser of these amounts ($16,000) and 20% of F's taxable income ($960,000 × 20% = $192,000). Thus, F's section 199A deduction for 2019 is $16,000. There is no carryover of any negative QBI into the following taxable year for purposes of section 199A.

(e) *Special rules*—(1) *Effect of deduction.* In the case of a partnership or S corporation, section 199A is applied at the partner or shareholder level. The section 199A deduction has no effect on the adjusted basis of a partner's interest in the partnership, the adjusted basis of a shareholder's stock in an S corporation, or an S corporation's accumulated adjustments account.

(2) *Self-employment tax and net investment income tax.* The deduction under section 199A does not reduce net earnings from self-employment under section 1402 or net investment income under section 1411.

(3) *Commonwealth of Puerto Rico.* If all of an individual's QBI from sources within the Commonwealth of Puerto Rico is taxable under section 1 of the Code for a taxable year, then for purposes of determining the QBI of such individual for such taxable year, the term ''United States'' includes the Commonwealth of Puerto Rico.

(4) *Coordination with alternative minimum tax.* For purposes of determining alternative minimum taxable income under section 55, the deduction allowed under section 199A(a) for a taxable year is equal in amount to the deduction allowed under section 199A(a) in determining taxable income for that taxable year (that is, without regard to any adjustments under sections 56 through 59).

(5) *Imposition of accuracy-related penalty on underpayments.* For rules related to the imposition of the accuracy-related penalty on underpayments for taxpayers who claim the deduction allowed under section 199A, see section 6662(d)(1)(C).

(6) *Reduction for income received from cooperatives.* In the case of any trade or business of a patron of a specified agricultural or horticultural cooperative, as defined in section 199A(g)(4), the amount of section 199A deduction determined under paragraphs (c) or (d) of this section with respect to such trade or business must be reduced by the lesser of:

(i) Nine percent of the QBI with respect to such trade or business as is properly allocable to qualified payments received from such cooperative, or

(ii) 50 percent of the W–2 wages with respect to such trade or business as are so allocable as determined under § 1.199A–2.

(f) *Effective/applicability date*—(1) *General rule.* Except as provided in paragraph (f)(2) of this section, the provisions of this section apply to taxable years ending after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. However, taxpayers may rely on the rules of this section until the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

(2) *Exception for non-calendar year RPE.* For purposes of determining QBI, W–2 wages, and UBIA of qualified property, if an individual receives any of these items from an RPE with a taxable year that begins before January 1, 2018 and ends after December 31, 2017, such items are treated as having been incurred by the individual during the individual's taxable year in which or with which such RPE taxable year ends.

■ **Par. 4.** Section 1.199A–2 is added to read as follows:

§ 1.199A–2 Determination of W–2 wages and unadjusted basis immediately after acquisition of qualified property.

(a) *Scope*—(1) *In general.* This section provides guidance on calculating a trade or business's W–2 wages properly allocable to QBI (W–2 wages) and the trade or business's unadjusted basis immediately after acquisition of all qualified property (UBIA of qualified property). The provisions of this section apply solely for purposes of section 199A of the Internal Revenue Code (Code).

(2) *W–2 wages.* Paragraph (b) of this section provides guidance on the determination of W–2 wages. The determination of W–2 wages must be made for each trade or business by the individual or RPE that directly conducts the trade or business before applying the aggregation rules of § 1.199A–4. In the case of W–2 wages paid by an RPE, the RPE must determine and report W–2 wages for each trade or business conducted by the RPE. W–2 wages are presumed to be zero if not determined and reported for each trade or business.

(3) *UBIA of qualified property.* Paragraph (c) of this section provides guidance on the determination of the UBIA of qualified property. The determination of the UBIA of qualified property must be made for each trade or business by the individual or RPE that directly conducts the trade or business before applying the aggregation rules of § 1.199A–4. In the case of qualified property held by an RPE, each partner's or shareholder's share of the UBIA of qualified property is an amount which bears the same proportion to the total UBIA of qualified property as the partner's or shareholder's share of tax depreciation bears to the RPE's total tax depreciation with respect to the property for the year. In the case of qualified property held by a partnership which does not produce tax depreciation during the year (for example, property that has been held for less than 10 years but whose recovery period has ended), each partner's share of the UBIA of qualified property is based on how gain would be allocated to the partners pursuant to sections 704(b) and 704(c) if the qualified property were sold in a hypothetical transaction for cash equal to the fair market value of the qualified property. In the case of qualified property held by an S corporation which does not produce tax depreciation during the year, each shareholder's share of the UBIA of qualified property is a share of the unadjusted basis proportionate to the ratio of shares in the S corporation held by the shareholder over the total shares of the S corporation. The UBIA of qualified property is presumed to be zero if not determined and reported for each trade or business.

(b) *W–2 wages*—(1) *In general.* Section 199A(b)(2)(B) provides limitations on the section 199A deduction based on the W–2 wages paid with respect each trade or business. Section 199A(b)(4)(B) provides that W–2 wages do not include any amount which is not properly allocable to QBI for purposes of section 199A(c)(1). This section provides a three step process for determining the W–2 wages paid with respect to a trade or business that are properly allocable to QBI. First, each individual or RPE must determine its total W–2 wages paid for the taxable year under the rules in paragraph (b)(2) of this section. Second, each individual or RPE must allocate its W–2 wages between or among one or more trades or businesses under the rules in paragraph (b)(3) of this section. Third, each individual or RPE must determine the amount of such wages with respect to each trade or business that are allocable to the QBI of the trade or business under the rules in paragraph (b)(4) of this section.

(2) *Definition of W–2 wages*—(i) *In general.* Section 199A(b)(4)(A) provides that the term W–2 wages means with respect to any person for any taxable year of such person, the amounts described in section 6051(a)(3) and (8) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year. Thus, the term W–2 wages includes the total amount of wages as defined in section 3401(a) plus the total amount of elective deferrals (within the meaning of section 402(g)(3)), the compensation deferred under section 457, and the amount of designated Roth contributions (as defined in section 402A). For this purpose, except as provided in paragraphs (b)(2)(iv)(C)(*2*) and (b)(2)(iv)(D) of this section, the Forms W–2, ''Wage and Tax Statement,'' or any subsequent form or document used in determining the amount of W–2 wages are those issued for the calendar year ending during the individual's or RPE's taxable year for wages paid to employees (or former employees) of the individual or RPE for employment by the individual or RPE. For purposes of this section, employees of the individual or RPE are limited to employees of the individual or RPE as defined in section 3121(d)(1) and (2). (For purposes of section 199A, this includes officers of an S corporation and employees of an individual or RPE under common law.)

(ii) *Wages paid by a person other than a common law employer.* In determining W–2 wages, an individual or RPE may take into account any W–2 wages paid by another person and reported by the other person on Forms W–2 with the other person as the employer listed in Box c of the Forms W–2, provided that the W–2 wages were paid to common law employees or officers of the individual or RPE for employment by the individual or RPE. In such cases, the person paying the W–2 wages and reporting the W–2 wages on Forms W–2 is precluded from taking into account such wages for purposes of determining W–2 wages with respect to that person. For purposes of this paragraph, persons that pay and report W–2 wages on behalf of or with respect to others can include certified professional employer organizations under section 7705, statutory employers under section 3401(d)(1), and agents under section 3504.

(iii) *Requirement that wages must be reported on return filed with the Social Security Administration (SSA)*—(A) *In general.* Pursuant to section 199A(b)(4)(C), the term W–2 wages does not include any amount that is not properly included in a return filed with SSA on or before the 60th day after the due date (including extensions) for such return. Under § 31.6051–2 of this chapter, each Form W–2 and the transmittal Form W–3, ''Transmittal of Wage and Tax Statements,'' together constitute an information return to be filed with SSA. Similarly, each Form W–2c, ''Corrected Wage and Tax Statement,'' and the transmittal Form W–3 or W–3c, ''Transmittal of Corrected Wage and Tax Statements,'' together constitute an information return to be filed with SSA. In determining whether any amount has been properly included in a return filed with SSA on or before the 60th day after the due date (including extensions) for such return, each Form W–2 together with its accompanying Form W–3 will be considered a separate information return and each Form W–2c together with its accompanying Form W–3 or Form W–3c will be considered a separate information return. Section 6071(c) provides that Forms W–2 and W–3 must be filed on or before January 31 of the year following the calendar year to which such returns relate (but see the special rule in § 31.6071(a)–1T(a)(3)(1) of this chapter for monthly returns filed under § 31.6011(a)–5(a) of this chapter). Corrected Forms W–2 are required to be filed with SSA on or before January 31 of the year following the year in which the correction is made.

(B) *Corrected return filed to correct a return that was filed within 60 days of the due date.* If a corrected information return (Return B) is filed with SSA on or before the 60th day after the due date (including extensions) of Return B to correct an information return (Return A) that was filed with SSA on or before the 60th day after the due date (including extensions) of the information return (Return A) and paragraph (b)(2)(iii)(C) of this section does not apply, then the wage information on Return B must be included in determining W–2 wages. If a corrected information return (Return D) is filed with SSA later than the 60th day after the due date (including extensions) of Return D to correct an information return (Return C) that was filed with SSA on or before the 60th day after the due date (including extensions) of the information return (Return C), and if Return D reports an increase (or increases) in wages included in determining W–2 wages from the wage amounts reported on Return C, then such increase (or increases) on Return D will be disregarded in determining W–2 wages (and only the wage amounts on Return C may be included in determining W–2 wages). If Return D reports a decrease (or decreases) in wages included in determining W–2 wages from the amounts reported on Return C, then, in determining W–2 wages, the wages reported on Return C must be reduced by the decrease (or decreases) reflected on Return D.

(C) *Corrected return filed to correct a return that was filed later than 60 days after the due date.* If an information return (Return F) is filed to correct an information return (Return E) that was not filed with SSA on or before the 60th day after the due date (including extensions) of Return E, then Return F (and any subsequent information returns filed with respect to Return E) will not be considered filed on or before the 60th day after the due date (including extensions) of Return F (or the subsequent corrected information return). Thus, if a Form W–2c (or corrected Form W–2) is filed to correct a Form W–2 that was not filed with SSA on or before the 60th day after the due date (including extensions) of the information return including the Form W–2 (or to correct a Form W–2c relating to an information return including a Form W–2 that had not been filed with SSA on or before the 60th day after the due date (including extensions) of the information return including the Form W–2), then the information return including this Form W–2c (or corrected Form W–2) will not be considered to have been filed with SSA on or before the 60th day after the due date (including extensions) for this information return including the Form W–2c (or corrected Form W–2), regardless of when the information return including the Form W–2c (or corrected Form W–2) is filed.

(iv) *Methods for calculating W–2 wages*—(A) *In general.* The Secretary may provide for methods to be used in calculating W–2 wages, including W–2 wages for short taxable years by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(B) *Acquisition or disposition of a trade or business*—(*1*) *In general.* In the case of an acquisition or disposition of a trade or business, the major portion of a trade or business, or the major portion of a separate unit of a trade or business that causes more than one individual or entity to be an employer of the employees of the acquired or disposed of trade or business during the calendar year, the W–2 wages of the individual or entity for the calendar year of the acquisition or disposition are allocated between each individual or entity based on the period during which the employees of the acquired or disposed of trade or business were employed by the individual or entity, regardless of which permissible method is used for reporting predecessor and successor wages on Form W–2, ''Wage and Tax Statement.'' For this purpose, the period of employment is determined consistently with the principles for determining whether an individual is an employee described in § 1.199A–2(b).

(*2*) *Acquisition or disposition.* For purposes of this paragraph (b)(2)(iv)(B), the term *acquisition or disposition* includes an incorporation, a formation, a liquidation, a reorganization, or a purchase or sale of assets.

(C) *Application in the case of a person with a short taxable year*—(*1*) *In general.* In the case of an individual or RPE with a short taxable year, subject to the rules of paragraph (b)(2) of this section, the W–2 wages of the individual or RPE for the short taxable year include only those wages paid during the short taxable year to employees of the individuals or RPE, only those elective deferrals (within the meaning of section 402(g)(3)) made during the short taxable year by employees of the individual or RPE and only compensation actually deferred under section 457 during the short taxable year with respect to employees of the individual or RPE.

(*2*) *Short taxable year that does not include December 31.* If an individual or RPE has a short taxable year that does not contain a calendar year ending during such short taxable year, wages paid to employees for employment by such individual or RPE during the short taxable year are treated as W–2 wages for such short taxable year for purposes of paragraph (b) of this section (if the wages would otherwise meet the requirements to be W–2 wages under this section but for the requirement that a calendar year must end during the short taxable year).

(D) *Remuneration paid for services performed in the Commonwealth of Puerto Rico.* In the case of an individual or RPE that conducts a trade or business in the Commonwealth of Puerto Rico, the determination of W–2 wages of such individual or RPE will be made without regard to any exclusion under section 3401(a)(8) for remuneration paid for services performed in the Commonwealth of Puerto Rico. The individual or RPE must maintain sufficient documentation (for example, Forms 499R–2/W–2PR) to substantiate the amount of remuneration paid for services performed in the Commonwealth of Puerto Rico that is used in determining the W–2 wages of such individual or RPE with respect to any trade or business conducted in the Commonwealth of Puerto Rico.

(3) *Allocation of wages to trades or businesses.* After calculating total W–2 wages for a taxable year, each individual or RPE that directly conducts more than one trade or business must allocate those wages among its various trades or businesses. W–2 wages must be allocated to the trade or business that generated those wages. In the case of W–2 wages that are allocable to more than one trade or business, the portion of the W–2 wages allocable to each trade or business is determined in the same manner as the expenses associated with those wages are allocated among the trades or businesses under § 1.199A–3(b)(5).

(4) *Allocation of wages to QBI.* Once W–2 wages for each trade or business have been determined, each individual or RPE must identify the amount of W–2 wages properly allocable to QBI for each trade or business. W–2 wages are properly allocable to QBI if the associated wage expense is taken into account in computing QBI under § 1.199A–3. In the case of an RPE, the wage expense must be allocated and reported to the partners or shareholders of the RPE as required by the Code, including subchapters K and S. The RPE must also identify and report the associated W–2 wages to its partners or shareholders.

(5) *Non-duplication rule.* Amounts that are treated as W–2 wages for a taxable year under any method cannot be treated as W–2 wages of any other taxable year. Also, an amount cannot be treated as W–2 wages by more than one trade or business.

(c) *UBIA of qualified property*—(1) *Qualified property*—(i) *In general.* The term *qualified property* means, with respect to any trade or business of an individual or RPE for a taxable year, tangible property of a character subject to the allowance for depreciation under section 167(a)—

(A) Which is held by, and available for use in, the trade or business at the close of the taxable year,

(B) Which is used at any point during the taxable year in the trade or business's production of QBI, and

(C) The depreciable period for which has not ended before the close of the individual's or RPE's taxable year.

(ii) *Improvements to qualified property.* In the case of any addition to, or improvement of, qualified property that has already been placed in service by the individual or RPE, such addition or improvement is treated as separate qualified property first placed in service on the date such addition or improvement is placed in service for purposes of paragraph (c)(2) of this section.

(iii) *Adjustments under sections 734(b) and 743(b).* Basis adjustments under sections 734(b) and 743(b) are not treated as qualified property.

(iv) *Property acquired at end of year.* Property is not qualified property if the property is acquired within 60 days of the end of the taxable year and disposed of within 120 days without having been used in a trade or business for at least 45 days prior to disposition, unless the taxpayer demonstrates that the principal purpose of the acquisition and disposition was a purpose other than increasing the section 199A deduction.

(2) *Depreciable period*—(i) *In general.* The term *depreciable period* means, with respect to qualified property of a trade or business, the period beginning on the date the property was first placed in service by the individual or RPE and ending on the later of—

(A) The date that is 10 years after such date, or

(B) The last day of the last full year in the applicable recovery period that would apply to the property under section 168(c), regardless of any application of section 168(g).

(ii) *Additional first-year depreciation under section 168.* The additional first-year depreciation deduction allowable under section 168 (for example, under section 168(k) or (m)) does not affect the applicable recovery period under this paragraph for the qualified property.

(iii) *Qualified property acquired in transactions subject to section 1031 or section 1033.* For purposes of paragraph (c)(2)(i) of this section, qualified property that is acquired in a like-kind exchange, as defined in § 1.168(i)–6(b)(11), or in an involuntary conversion, as defined in § 1.168(i)–6(b)(12), is treated as replacement MACRS property as defined in § 1.168(i)–6(b)(1). For purposes of paragraph (c)(2)(i) of this section, the date on which the replacement MACRS property was first placed in service by the individual or RPE is determined as follows—

(A) Except as provided in paragraph (c)(2)(iii)(C) of this section, the date the exchanged basis, as defined in § 1.168(i)–6(b)(7), in the replacement MACRS property was first placed in service by the trade or business is the date on which the relinquished property was first placed in service by the individual or RPE; and

(B) Except as provided in paragraph (c)(2)(iii)(C) of this section, the date the excess basis, as defined in § 1.168(i) 6(b)(8), in the replacement MACRS property was first placed in service by the individual or RPE is the date on which the replacement MACRS property was first placed in service by the individual or RPE; or

(C) If the individual or RPE makes an election under § 1.168(i)–096(i)(1) (the election not to apply § 1.168(i)–096)), the date the exchanged basis and excess basis in the replacement MACRS property was first placed in service by the trade or business is the date on which the replacement MACRS property was first placed in service by the individual or RPE.

(iv) *Qualified property acquired in transactions subject to section 168(i)(7).* If an individual or RPE acquires qualified property in a transaction described in section 168(i)(7)(B) (pertaining to treatment of transferees in certain nonrecognition transactions), the individual or RPE must determine the date on which the qualified property was first placed in service for purposes of paragraph (c)(2)(i) of this section as follows—

(A) For the portion of the transferee's unadjusted basis in the qualified property that does not exceed the transferor's unadjusted basis in such property, the date such portion was first placed in service by the transferee is the date on which the transferor first placed the qualified property in service; and

(B) For the portion of the transferee's unadjusted basis in the qualified property that exceeds the transferor's unadjusted basis in such property, such portion is treated as separate qualified property that the transferee first placed in service on the date of the transfer.

(3) *Unadjusted basis immediately after acquisition.* The term *unadjusted basis immediately after acquisition* (UBIA) means the basis on the placed in service date of the property as determined under section 1012 or other applicable sections of Chapter 1, including subchapters O (relating to gain or loss on dispositions of property), C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses). UBIA is determined without regard to any adjustments described in section 1016(a)(2) or (3), to any adjustments for tax credits claimed by the individual or RPE (for example, under section 50(c)), or to any adjustments for any portion of the basis for which the individual or RPE has elected to treat as an expense (for example, under sections 179, 179B, or 179C). However, UBIA does reflect the reduction in basis for the percentage of the individual's or RPE's use of property for the taxable year other than in the trade or business.

(4) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example 1 to paragraph (c)(4). (i) On January 5, 2012, A purchases for $1 million and places in service Real Property X in A's trade or business. A's trade or business is not an SSTB. A's basis in Real Property X under section 1012 is $1 million. Real Property X is qualified property within the meaning of section 199A(b)(6). As of December 31, 2018, A's basis in Real Property X, as adjusted under section 1016(a)(2) for depreciation deductions under section 168(a), is $821,550.

(ii) For purposes of section 199A(b)(2)(B)(ii) and this section, A's UBIA of Real Property X is its $1 million cost basis under section 1012, regardless of any later depreciation deductions under section 168(a) and resulting basis adjustments under section 1016(a)(2).

Example 2 to paragraph (c)(4). The facts are the same as in *Example 1 of this paragraph (c)(4),* except that on January 15, 2019, A enters into a like-kind exchange under section 1031 in which A exchanges Real Property X for Real Property Y. Real Property Y has a value of $1 million. No cash or other property is involved in the exchange. As of January 15, 2019, A's basis in Real Property X, as adjusted under section 1016(a)(2) for depreciation deductions under section 168(a), is $820,482. A's UBIA in Real Property Y is $820,482 as determined under section 1031(d) (A's adjusted basis in Real Property X carried over to Real Property Y). Pursuant to paragraph (c)(2)(iii)(A) of this section, Real Property Y is first placed in service by A on January 5, 2012, which is the date on which Property X was first placed in service by A.

Example 3 to paragraph (c)(4). (i) C operates a trade or business that is not an SSTB as a sole proprietorship. On January 5, 2011, C purchases for $10,000 and places in service Machinery Y in C's trade or business. C's basis in Machinery Y under section 1012 is $10,000. Machinery Y is qualified property within the meaning of section 199A(b)(6). Assume that Machinery Y's recovery period under section 168(c) is 10 years, and C depreciates Machinery Y under the general depreciation system by using the straight-line depreciation method, a 10-year recovery period, and the half-year convention. As of December 31, 2018, C's basis in Machinery Y, as adjusted under section 1016(a)(2) for depreciation deductions under section 168(a), is $2,500. On January 1, 2019, C incorporates the sole proprietorship and elects to treat the newly formed entity as an S corporation for Federal income tax purposes. C contributes Machinery Y and all other assets of the trade or business to the S corporation in a non-recognition transaction under section 351. The S corporation immediately places all the assets in service.

(ii) For purposes of section 199A(b)(2)(B)(ii) and this section, C's UBIA of Machinery Y from 2011 through 2018 is its $10,000 cost basis under section 1012, regardless of any later depreciation deductions under section 168(a) and resulting basis adjustments under section 1016(a)(2). Pursuant to paragraph (c)(3) of this section, S corporation's UBIA of Machinery Y is determined under the applicable rules of subchapter C as of date the S corporation places it in service. Therefore, the S corporation's UBIA of Machinery Y is $2,500, the basis of the property under section 362 at the time the S corporation places the property in service. Pursuant to paragraph (c)(2)(iv)(A) of this section, for purposes of determining the depreciable period of Machinery Y, the S corporation's placed in service date will be the date C originally placed the property in service in 2011. Therefore, Machinery Y may be qualified property of the S corporation (assuming it continues to be used in the business) for 2019 and 2020 and will not be qualified property of the S corporation after 2020, because its depreciable period will have expired.

(d) *Effective/applicability date*—(1) *General rule.* Except as provided in paragraph (d)(2) of this section, the provisions of this section apply to taxable years ending after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. However, taxpayers may rely on the rules of this section until the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

(2) *Exceptions*–(i) *Anti-abuse rules.* The provisions of paragraph (c)(1)(iv) of this section apply to taxable years ending after December 22, 2017.

(ii) *Non-calendar year RPE.* For purposes of determining QBI, W–2 wages, and UBIA of qualified property, if an individual receives any of these items from an RPE with a taxable year that begins before January 1, 2018 and ends after December 31, 2017, such items are treated as having been incurred by the individual during the individual's taxable year in which or with which such RPE taxable year ends.

■ **Par. 5.** Section 1.199A–3 is added to read as follows:

§ 1.199A–3 Qualified business income, qualified REIT dividends, and qualified PTP income.

(a) *In general.* This section provides rules on the determination of a trade or business's QBI, as well as the determination of qualified REIT dividends and qualified PTP income. The provisions of this section apply solely for purposes of section 199A of the Internal Revenue Code (Code). Paragraph (b) of this section provides rules for the determination of QBI. Paragraph (c) of this section provides rules for the determination of qualified REIT dividends and qualified PTP income. QBI must be determined and reported for each trade or business by the individual or RPE that directly conducts the trade or business before applying the aggregation rules of § 1.199A–4.

(b) *Definition of qualified business income*—(1) *In general.* For purposes of this section, the term *qualified business income (QBI)* means, for any taxable year, the net amount of qualified items of income, gain, deduction, and loss with respect to any trade or business of the taxpayer as described in paragraph (b)(2) of this section, provided the other requirements of this section and section 199A are satisfied (including, for example, the exclusion of income not effectively connected with a United States trade or business).

(i) *Section 751 gain.* With respect to a partnership, if section 751(a) or (b) applies, then gain or loss attributable to assets of the partnership giving rise to ordinary income under section 751(a) or (b) is considered attributable to the trades or businesses conducted by the partnership, and is taken into account for purposes of computing QBI.

(ii) *Guaranteed payments for the use of capital.* Income attributable to a guaranteed payment for the use of capital is not considered to be attributable to a trade or business, and thus is not taken into account for purposes of computing QBI; however, the partnership's deduction associated with the guaranteed payment will be taken into account for purposes of computing QBI if such deduction is properly allocable to the trade or business and is otherwise deductible for Federal income tax purposes.

(iii) *Section 481 adjustments.* Section 481 adjustments (whether positive or negative) are taken into account for purposes of computing QBI to the extent that the requirements of this section and section 199A are otherwise satisfied, but only if the adjustment arises in taxable years ending after December 31, 2017.

(iv) *Previously disallowed losses.* Generally, previously disallowed losses or deductions (including under sections 465, 469, 704(d), and 1366(d)) allowed in the taxable year are taken into account for purposes of computing QBI. However, losses or deductions that were disallowed, suspended, limited, or carried over from taxable years ending before January 1, 2018 (including under sections 465, 469, 704(d), and 1366(d)), are not taken into account in a later taxable year for purposes of computing QBI.

(v) *Net operating losses.* Generally, a deduction under section 172 for a net operating loss is not considered with respect to a trade or business and therefore, is not taken into account in computing QBI. However, to the extent that the net operating loss is disallowed under section 461(l), the net operating loss is taken into account for purposes of computing QBI.

(2) *Qualified items of income, gain, deduction, and loss*—(i) *In general.* The term *qualified items of income, gain, deduction, and loss* means items of gross income, gain, deduction, and loss to the extent such items are—

(A) Effectively connected with the conduct of a trade or business within the United States (within the meaning of section 864(c), determined by substituting ''trade or business (within the meaning of section 199A)'' for ''nonresident alien individual or a foreign corporation'' or for ''a foreign corporation'' each place it appears), and

(B) Included or allowed in determining taxable income for the taxable year.

(ii) *Items not taken into account.* Notwithstanding paragraph (b)(2)(i) of this section and in accordance with section 199A(c)(3)(B), the following items are not taken into account as a qualified item of income, gain, deduction, or loss:

(A) Any item of short-term capital gain, short-term capital loss, long-term capital gain, long-term capital loss, including any item treated as one of such items, such as gains or losses under section 1231 which are treated as capital gains or losses.

(B) Any dividend, income equivalent to a dividend, or payment in lieu of dividends described in section 954(c)(1)(G). Any amount described in section 1385(a)(1) is not treated as described in this clause.

(C) Any interest income other than interest income which is properly allocable to a trade or business. For purposes of section 199A and this section, interest income attributable to an investment of working capital, reserves, or similar accounts is not properly allocable to a trade or business.

(D) Any item of gain or loss described in section 954(c)(1)(C) (transactions in commodities) or section 954(c)(1)(D) (excess foreign currency gains) applied in each case by substituting ''trade or business'' for ''controlled foreign corporation.''

(E) Any item of income, gain, deduction, or loss taken into account under section 954(c)(1)(F) (income from notional principal contracts) determined without regard to section 954(c)(1)(F)(ii) and other than items attributable to notional principal contracts entered into in transactions qualifying under section 1221(a)(7).

(F) Any amount received from an annuity which is not received in connection with the trade or business.

(G) Any qualified REIT dividends as defined in paragraph (c)(2) of this section or qualified PTP income as defined in paragraph (c)(3) of this section.

(H) Reasonable compensation received by a shareholder from an S corporation. However, the S corporation's deduction for such reasonable compensation will reduce QBI if such deduction is properly allocable to the trade or business and is otherwise deductible for Federal income tax purposes.

(I) Any guaranteed payment described in section 707(c) received by a partner for services rendered with respect to the trade or business, regardless of whether the partner is an individual or an RPE. However, the partnership's deduction for such guaranteed payment will reduce QBI if such deduction is properly allocable to the trade or business and is otherwise deductible for Federal income tax purposes.

(J) Any payment described in section 707(a) received by a partner for services rendered with respect to the trade or business, regardless of whether the partner is an individual or an RPE. However, the partnership's deduction for such payment will reduce QBI if such deduction is properly allocable to the trade or business and is otherwise deductible for Federal income tax purposes.

(3) *Commonwealth of Puerto Rico.* For the purposes of determining QBI, the term *United States* includes the Commonwealth of Puerto Rico in the case of any taxpayer with QBI for any taxable year from sources within the Commonwealth of Puerto Rico, if all of such receipts are taxable under section 1 for such taxable year. This paragraph only applies as provided in section 199A(f)(1)(C).

(4) *Wages.* Expenses for all wages paid (or incurred in the case of an accrual method taxpayer) must to be taken into account in computing QBI (if the requirements of this section and section 199A are satisfied) regardless of the application of the W–2 wage limitation described in § 1.199A–1(d)(2)(iv).

(5) *Allocation of items among directly-conducted trades or businesses*— If an individual or an RPE directly conducts multiple trades or businesses, and has items of QBI which are properly attributable to more than one trade or business, the individual or RPE must allocate those items among the several trades or businesses to which they are attributable using a reasonable method based on all the facts and circumstances. The individual or RPE may use a different reasonable method for different items of income, gain, deduction, and loss. The chosen reasonable method for each item must be consistently applied from one taxable year to another and must clearly reflect the income and expenses of each trade or business. The overall combination of methods must also be reasonable based on all facts and circumstances. The books and records maintained for a trade or business must be consistent with any allocations under this paragraph.

(c) *Qualified REIT Dividends and Qualified PTP Income*—(1) *In general.* Qualified REIT dividends and qualified PTP income are the sum of qualified REIT dividends as defined in § 1.199A–3(c)(2) earned directly or through an RPE and the net amount of qualified PTP income as defined in § 1.199A–3(c)(3) earned directly or through an RPE.

(2) *Qualified REIT dividend*—(i) The term *qualified REIT dividend* means any dividend from a REIT received during the taxable year which—

(A) Is not a capital gain dividend, as defined in section 857(b)(3), and

(B) Is not qualified dividend income, as defined in section 1(h)(11).

(ii) A REIT dividend is not a qualified REIT dividend if the stock with respect to which it is received is held for fewer than 45 days, taking into account the principles of section 246(c)(3) and (4).

(3) *Qualified PTP income*—(i) *In general.* The term *qualified PTP income* means the sum of—

(A) The net amount of such taxpayer's allocable share of income, gain, deduction, and loss from a PTP as defined in section 7704(b) that is not taxed as a corporation under section 7704(a), plus

(B) Any gain or loss attributable to assets of the PTP giving rise to ordinary income under section 751(a) or (b) that is considered attributable to the trades or businesses conducted by the partnership.

(ii) *Special rules.* The rules applicable to the determination of QBI described in paragraph (b) of this section also apply to the determination of a taxpayer's allocable share of income, gain, deduction, and loss from a PTP. An individual's allocable share of income from a PTP, and any section 751 gain or loss is qualified PTP income only to the extent the items meet the qualifications of section 199A and this section including the requirement that the item is included or allowed in determining taxable income for the taxable year, and the requirement that the item be effectively connected with the conduct of a trade or business within the United States. For example, if an individual owns an interest in a PTP, and for the taxable year is allocated a distributive share of net loss which is disallowed under the passive activity rules of section 469, such loss is not taken into account for purposes of section 199A. Furthermore, each PTP is required to determine its qualified PTP income for each trade or business and report that information to its owners as described in § 1.199A–6(b)(3).

(d) *Effective/applicability date*—(1) *General rule.* Except as provided in paragraph (d)(2) of this section, the provisions of this section apply to taxable years ending after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. However, taxpayers may rely on the rules of this section until the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

(2) *Exceptions*—(i) *Anti-abuse rules.* The provisions of paragraph (c)(2)(ii) of this section apply to taxable years ending after December 22, 2017.

(ii) *Non-calendar year RPE.* For purposes of determining QBI, W–2 wages, and UBIA of qualified property, if an individual receives any of these items from an RPE with a taxable year that begins before January 1, 2018 and ends after December 31, 2017, such items are treated as having been incurred by the individual during the individual's taxable year in which or with which such RPE taxable year ends.

■ **Par. 6.** Section 1.199A–4 is added to read as follows:

§ 1.199A–4 Aggregation.

(a) *Scope and purpose.* An individual or Relevant Passthrough Entity (RPE) may be engaged in more than one trade or business. Except as provided in this section, each trade or business is a separate trade or business for purposes of applying the limitations described in § 1.199A–1(d)(2)(iv). This section sets forth rules to allow individuals to aggregate trades or businesses, treating the aggregate as a single trade or business for purposes of applying the limitations described in § 1.199A–1(d)(2)(iv). Trades or businesses may be aggregated only to the extent provided in this section, but aggregation by taxpayers is not required.

(b) *Aggregation rules*—(1) *General rule.* Except as provided in paragraph (b)(3) of this section, trades or businesses may be aggregated only if an individual can demonstrate that—

(i) The same person or group of persons, directly or indirectly, owns 50 percent or more of each trade or business to be aggregated, meaning in the case of such trades or businesses owned by an S corporation, 50 percent or more of the issued and outstanding shares of the corporation, or, in the case of such trades or businesses owned by a partnership, 50 percent or more of the capital or profits in the partnership;

(ii) The ownership described in paragraph (b)(1)(i) of this section exists for a majority of the taxable year in which the items attributable to each trade or business to be aggregated are included in income;

(iii) All of the items attributable to each trade or business to be aggregated are reported on returns with the same taxable year, not taking into account short taxable years;

(iv) None of the trades or businesses to be aggregated is a specified service trade or business (SSTB) as defined in § 1.199A–5; and

(v) The trades or businesses to be aggregated satisfy at least two of the following factors (based on all of the facts and circumstances):

(A) The trades or businesses provide products and services that are the same or customarily offered together.

(B) The trades or businesses share facilities or share significant centralized business elements, such as personnel, accounting, legal, manufacturing, purchasing, human resources, or information technology resources.

(C) The trades or businesses are operated in coordination with, or reliance upon, one or more of the businesses in the aggregated group (for example, supply chain interdependencies).

(2) *Operating rules.* An individual may aggregate trades or businesses operated directly and the individual's share of QBI, W–2 wages, and UBIA of qualified property from trades or businesses operated through RPEs. Multiple owners of an RPE need not aggregate in the same manner. For those trades or businesses directly operated by the individual, the individual computes QBI, W–2 wages, and UBIA of qualified property for each trade or business before applying these aggregation rules. If an individual aggregates multiple trades or businesses under paragraph (b)(1) of this section, the individual must combine the QBI, W–2 wages, and UBIA of qualified property for all aggregated trades or businesses for purposes of applying the W–2 wage and UBIA of qualified property limitations described in § 1.199A–1(d)(2)(iv).

(3) *Family attribution.* For purposes of determining ownership under paragraph (b)(1)(i) of this section an individual is considered as owning the interest in each trade or business owned, directly or indirectly, by or for—

(i) The individual's spouse (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance), and

(ii) The individual's children, grandchildren, and parents.

(c) *Reporting and consistency*—(1) *In general.* Once an individual chooses to aggregate two or more trades or businesses, the individual must consistently report the aggregated trades or businesses in all subsequent taxable years. However, an individual may add a newly created or newly acquired (including through non-recognition transfers) trade or business to an existing aggregated trade or business if the requirements of paragraph (b)(1) of this section are satisfied. In a subsequent year, if there is a change in facts and circumstances such that an individual's prior aggregation of trades or businesses no longer qualifies for aggregation under the rules of this section, then the trades or businesses will no longer be aggregated within the meaning of this section, and the individual must reapply the rules in paragraph (b)(1) of this section to determine a new permissible aggregation (if any).

(2) *Individual disclosure*—(i) *Required annual disclosure.* For each taxable year, individuals must attach a statement to their returns identifying each trade or business aggregated under paragraph (b)(1) of this section. The statement must contain—

(A) A description of each trade or business;

(B) The name and EIN of each entity in which a trade or business is operated;

(C) Information identifying any trade or business that was formed, ceased operations, was acquired, or was disposed of during the taxable year; and

(D) Such other information as the Commissioner may require in forms, instructions, or other published guidance.

(ii) *Failure to disclose.* If an individual fails to attach the statement required in paragraph (c)(2)(i) of this section, the Commissioner may disaggregate the individual's trades or businesses.

(d) *Examples.* The following examples illustrate the principles of this section. For purposes of these examples, assume the taxpayer is a United States citizen, all individuals and RPEs use a calendar taxable year, there are no ownership changes during the taxable year, all trades or businesses satisfy the requirements under section 162, all tax items are effectively connected to a trade or business within the United States within the meaning of section 864(c), and none of the trades or businesses is an SSTB within the meaning of § 1.199A–5. Except as otherwise specified, a single letter denotes an individual taxpayer.

Example 1 to paragraph (d). (i) *Facts.* A wholly owns and operates a catering business and a restaurant through separate disregarded entities. The catering business and the restaurant share centralized purchasing to obtain volume discounts and a centralized accounting office that performs all of the bookkeeping, tracks and issues statements on all of the receivables, and prepares the payroll for each business. A maintains a website and print advertising materials that reference both the catering business and the restaurant. A uses the restaurant kitchen to prepare food for the catering business. The catering business employs its own staff and owns equipment and trucks that are not used or associated with the restaurant.

(ii) *Analysis.* Because the restaurant and catering business are held in disregarded entities, A will be treated as operating each of these businesses directly and thereby satisfies paragraph (b)(1)(i) of this section. Under paragraph (b)(1)(v) of this section, A satisfies the following factors: Paragraph (b)(1)(v)(A) is met as both businesses offer prepared food to customers; and paragraph (b)(1)(v)(B) of this section is met because the two businesses share the same kitchen facilities in addition to centralized purchasing, marketing, and accounting. Having satisfied paragraph (b)(1)(i) through(v) of this section, A may treat the catering business and the restaurant as a single trade or business for purposes of applying § 199A–1(d).

Example 2 to paragraph (d). (i) *Facts.* Assume the same facts as in *Example 1 of this paragraph,* but the catering and restaurant businesses are owned in separate partnerships and A, B, C, and D each own a 25% interest in the capital and profits of each of the two partnerships. A, B, C, and D are unrelated.

(ii) *Analysis.* Because under paragraph (b)(1)(i) of this section A, B, C, and D together own more than 50% of the capital and profits in each of the two partnerships, they may each treat the catering business and the restaurant as a single trade or business for purposes of applying § 1.199A–1(d).

Example 3 to paragraph (d). (i) *Facts.* W owns a 75% interest in S1, an S corporation, and a 75% interest in the capital and profits of PRS, a partnership. S1 manufactures clothing and PRS is a retail pet food store. W manages S1 and PRS.

(ii) *Analysis.* W owns more than 50% of the stock of S1 and more than 50% of the capital and profits of PRS thereby satisfying paragraph (b)(1)(i) of this section. Although W manages both S1 and PRS, W is not able to satisfy the requirements of paragraph (b)(1)(v) of this section as the two businesses do not provide goods or services that are the same or customarily offered together; there are no significant centralized business elements; and no facts indicate that the businesses are operated in coordination with, or reliance upon, one another. W must treat S1 and PRS as separate trades or businesses for purposes of applying § 1.199A–1(d).

Example 4 to paragraph (d). (i) *Facts.* E owns a 60% interest in the capital and profits of each of four partnerships (PRS1, PRS2, PRS3, and PRS4). Each partnership operates a hardware store. A team of executives oversees the operations of all four of the businesses and controls the policy decisions involving the business as a whole. Human resources and accounting are centralized for the four businesses. E reports PRS1, PRS3, and PRS4 as an aggregated trade or business under paragraph (b)(1) of this section and reports PRS2 as a separate trade or business. Only PRS2 generates a net taxable loss.

(ii) *Analysis.* E owns more than 50% of the capital and profits of each partnership thereby satisfying paragraph (b)(1)(i) of this section. Under paragraph (b)(1)(v) of this section, the following factors are satisfied: Paragraph (b)(1)(v)(A) of this section because each partnership operates a hardware store; and paragraph (b)(1)(v)(B) of this section because the businesses share accounting and human resource functions. E's decision to aggregate only PRS1, PRS3, and PRS4 into a single trade or business for purposes of applying § 1.199A–1(d) is permissible. The loss from PRS2 will be netted against the aggregate profits of PRS1, PRS3 and PRS4 pursuant to § 1.199A–1(d)(2)(iii).

Example 5 to paragraph (d). (i) *Facts.* Assume the same facts as *Example 4 of this paragraph,* and that F owns a 10% interest in the capital and profits of PRS1, PRS2, PRS3, and PRS4.

(ii) *Analysis.* Because under paragraph (b)(1)(i) of this section E owns more than 50% of the capital and profits in the four partnerships, F may aggregate PRS 1, PRS2, PRS3, and PRS4 as a single trade or business for purposes of applying § 1.199A–1(d), provided that F can demonstrate that the ownership test is met by E.

Example 6 to paragraph (d). (i) *Facts.* D owns 75% of the stock of S1, S2, and S3, each of which is an S corporation. Each S corporation operates a grocery store in a separate state. S1 and S2 share centralized purchasing functions to obtain volume discounts and a centralized accounting office that performs all of the bookkeeping, tracks and issues statements on all of the receivables, and prepares the payroll for each business. S3 is operated independently from the other businesses.

(ii) *Analysis.* D owns more than 50% of the stock of each S corporation thereby satisfying paragraph (b)(1)(i) of this section. Under paragraph (b)(1)(v) of this section, the grocery stores satisfy paragraph (b)(1)(v)(A) of this section because they are in the same trade or business. Only S1 and S2 satisfy paragraph (b)(1)(v)(B) of this section because of their centralized purchasing and accounting offices. D is only able to show that the requirements of paragraph (b)(1)(v)(B) of this section are satisfied for S1 and S2; therefore, D only may aggregate S1 and S2 into a single trade or business for purposes of § 1.199A–1(d). D must report S3 as a separate trade or business for purposes of applying § 1.199A–1(d).

Example 7 to paragraph (d). (i) *Facts.* Assume the same facts as *Example 6 of this paragraph* except each store is independently operated and S1 and S2 do not have centralized purchasing or accounting functions.

(ii) *Analysis.* Although the stores provide the same products and services within the meaning of paragraph (b)(1)(v)(A) of this section, D cannot show that another factor under paragraph (b)(1)(v) of this section is present. Therefore, D must report S1, S2, and S3 as separate trades or businesses for purposes of applying § 1.199A–1(d).

Example 8 to paragraph (d). (i) *Facts.* G owns 80% of the stock in S1, an S corporation and 80% of the capital and profits in LLC1 and LLC2, each of which is a partnership for Federal tax purposes. LLC1 manufactures and supplies all of the widgets sold by LLC2. LLC2 operates a retail store that sells LLC1's widgets. S1 owns the real property leased to LLC1 and LLC2 for use by the factory and retail store. The entities share common advertising and management.

(ii) *Analysis.* G owns more than 50% of the stock of S1 and more than 50% of the capital and profits in LLC1 and LLC2 thus satisfying paragraph (b)(1)(i) of this section. LLC1, LLC2, and S1 share significant centralized business elements and are operated in coordination with, or in reliance upon, one or more of the businesses in the aggregated group. G can treat the business operations of LLC1 and LLC2 as a single trade or business for purposes of applying § 1.199A–1(d). S1 is eligible to be included in the aggregated group because it leases property to a trade or business within the aggregated trade or business as described in § 1.199A–1(b)(13) and meets the requirements of paragraph (b)(1) of this section.

Example 9 to paragraph (d). (i) *Facts.* Same facts as *Example 8 of this paragraph,* except G owns 80% of the stock in S1 and 20% of the capital and profits in each of LLC1 and LLC2. B, G's son, owns a majority interest in LLC2, and M, G's mother, owns a majority interest in LLC1. B does not own an interest in S1 or LLC1, and M does not own an interest in S1 or LLC2.

(ii) *Analysis.* Under the rules in paragraph (b)(3) of this section, B and M's interest in LLC2 and LLC1, respectively, are attributable to G and G is treated as owning a majority interest in LLC2 and LLC; G thus satisfies paragraph (b)(1)(i) of this section. G may aggregate his interests in LLC1, LLC2, and S1 as a single trade or business for purposes of applying § 1.199A–1(d). Under paragraph (b)(3) of this section, S1 is eligible to be included in the aggregated group because it leases property to a trade or business within the aggregated trade or business as described in § 1.199A–1(b)(13) and meets the requirements of paragraph (b)(1) of this section.

Example 10 to paragraph (d). (i) *Facts.* F owns a 75% interest and G owns a 5% interest in the capital and profits of five partnerships (PRS1–PRS5). H owns a 10% interest in the capital and profits of PRS1 and PRS2. Each partnership operates a restaurant and each restaurant separately constitutes a trade or business for purposes of section 162. G is the executive chef of all of the restaurants and as such he creates the menus and orders the food supplies.

(ii) *Analysis.* F owns more than 50% of capital and profits in the partnerships thereby satisfying paragraph (b)(1)(i) of this section. Under paragraph (b)(1)(v) of this section, the restaurants satisfy paragraph (b)(1)(v)(A) of this section because they are in the same trade or business, and paragraph (b)(1)(v)(B) of this section is satisfied as G is the executive chef of all of the restaurants and the businesses share a centralized function for ordering food and supplies. F can show the requirements under paragraph (b)(1) of this section are satisfied as to all of the restaurants. Because F owns a majority interest in each of the partnerships, G can demonstrate that paragraph (b)(1)(i) of this section is satisfied. G can also aggregate all five restaurants into a single trade or business for purposes of applying § 1.199A–1(d). H, however, only owns an interest in PRS1 and PRS2. Like G, H satisfies paragraph (b)(1)(i) of this section because F owns a majority interest. H can, therefore, aggregate PRS1 and PRS2 into a single trade or business for purposes of applying § 1.199A–1(d).

Example 11 to paragraph (d). (i) *Facts.* H, J, K, and L own interests in PRS1 and PRS2, each a partnership, and S1 and S2, each an S corporation. H, J, K and L also own interests in C, an entity taxable as a C corporation. H owns 30%, J owns 20%, K owns 5%, L owns 45% of each of the five entities. All of the entities satisfy 2 of the 3 factors under paragraph (b)(1)(v) of this section. For purposes of section 199A the taxpayers report the following aggregated trades or businesses: H aggregates PRS1 and S1 together and aggregates PRS2 and S2 together; J aggregates PRS1, S1 and S2 together and reports PRS2 separately; K aggregates PRS1 and PRS2 together and aggregates S1 and S2 together; and L aggregates S1, S2, and PRS2 together and reports PRS1 separately. C cannot be aggregated.

(ii) *Analysis.* Under paragraph (b)(1)(i) of this section, because H, J, and K together own a majority interest in PRS1, PRS2, S1, and S2, H, J, K, and L are permitted to aggregate under paragraph (b)(1). Further, the aggregations reported by the taxpayers are permitted, but not required for each of H, J, K, and L. C's income is not eligible for the section 199A deduction and it cannot be aggregated for purposes of applying § 1.199A–1(d).

Example 12 to paragraph (d). (i) *Facts.* L owns 60% of the profits and capital interests in PRS1, a partnership, a business that sells non-food items to grocery stores. L also owns 55% of the profits and capital interests in PRS2, a partnership, which owns and operates a distribution trucking business. The predominant portion of PRS2's business is transporting goods for PRS1.

(ii) *Analysis.* L is able to meet (b)(1)(i) as the majority owner of PRS1 and PRS2. Under paragraph (b)(1)(v) of this section, L is only able to show the operations of PRS1 and PRS2 are operated in reliance of one another under paragraph (b)(1)(v)(C) of this section. For purposes of applying § 1.199A–1(d), L must treat PRS1 and PRS2 as separate trades or businesses.

Example 13 to paragraph (d). (i) *Facts.* C owns a majority interest in a sailboat racing team and also owns an interest in PRS1 which operates a marina. PRS1 is a trade or business under section 162, but the sailboat racing team is not a trade or business within the meaning of section 162.

(ii) *Analysis.* C has only one trade or business for purposes of section 199A and, therefore, cannot aggregate the interest in the racing team with PRS1 under paragraph (b)(1) of this section.

Example 14 to paragraph (d). (i) *Facts.* Trust wholly owns LLC1, LLC2, and LLC3. LLC1 operates a trucking company that delivers lumber and other supplies sold by LLC2. LLC2 operates a lumber yard and supplies LLC3 with building materials. LLC3 operates a construction business. LLC1, LLC2, and LLC3 have a centralized human resources department, payroll, and accounting department.

(ii) *Analysis.* Because Trust owns 100% of the interests in LLC1, LLC2, and LLC3, Trust satisfies paragraph (b)(1)(i) of this section. Trust can also show that it satisfies paragraph (b)(1)(v)(B) of this section as the trades or businesses have a centralized human resources department, payroll, and accounting department. Trust also can show is meets paragraph (b)(1)(v)(C) of this section as the trades or businesses are operated in coordination, or reliance upon, one or more in the aggregated group. Trust can aggregate LLC1, LLC2, and LLC3 for purposes of applying § 1.199A–1(d).

(e) *Effective/applicability date*—(1) *General rule.* Except as provided in paragraph (e)(2) of this section, the provisions of this section apply to taxable years ending after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. However, taxpayers may rely on the rules of this section until the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

(2) *Exception for non-calendar year RPE.* For purposes of determining QBI, W–2 wages, and UBIA of qualified property, if an individual receives any of these items from an RPE with a taxable year that begins before January 1, 2018 and ends after December 31, 2017, such items are treated as having been incurred by the individual during the individual's taxable year in which or with which such RPE taxable year ends.

■ **Par. 7.** Section 1.199A–5 is added to read as follows:

§ 1.199A–5 Specified service trades or businesses and the trade or business of performing services as an employee.

(a) *Scope and Effect*—(1) *Scope.* This section provides guidance on specified service trades or businesses (SSTBs) and the trade or business of performing services as an employee. This paragraph (a) describes the effect of being an SSTB or the trade or business of performing services as an employee. Paragraph (b) of this section provides definitional guidance on SSTBs. Paragraph (c) of this section provides special rules related to SSTBs. Paragraph (d) of this section provides guidance on the trade or business of performing services as an employee. The provisions of this section apply solely for purposes of section 199A of the Internal Revenue Code (Code).

(2) *Effect of being an SSTB.* If a trade or business is an SSTB, no QBI, W–2 wages, or UBIA of qualified property from the SSTB may be taken into account by any individual whose taxable income exceeds the phase-in range as defined in § 1.199A–1(b)(3), even if the item is derived from an activity that is not itself a specified service activity. If a trade or business conducted by a relevant passthrough entity (RPE) is an SSTB, this limitation applies to any direct or indirect individual owners of the business, regardless of whether the owner is passive or participated in any specified service activity. However, the SSTB limitation does not apply to individuals with taxable income below the threshold amount as defined in § 1.199A–1(b)(11). A phase-in rule, provided in § 1.199A–1(d)(2), applies to individuals with taxable income within the phase-in range, allowing them to take into account a certain ''applicable percentage'' of QBI, W–2 wages, and UBIA of qualified property from an SSTB. A direct or indirect owner of a trade or business engaged in the performance of a specified service is engaged in the performance of the specified service for purposes of section 199A and this section, regardless of whether the owner is passive or participated in the specified service activity.

(3) *Trade or business of performing services as an employee.* The trade or business of performing services as an employee is not a trade or business for purposes of section 199A and the regulations thereunder. Therefore, no items of income, gain, loss, or deduction from the trade or business of performing services as an employee constitute QBI within the meaning of section 199A and § 1.199A–3. No taxpayer may claim a section 199A deduction for wage income, regardless of the amount of taxable income.

(b) *Definition of specified service trade or business.* Except as provided in paragraph (c)(1) of this section, the term *specified service trade or business (SSTB)* means any of the following:

(1) *Listed SSTBs.* Any trade or business involving the performance of services in one or more of the following fields:

(i) Health as described in paragraph (b)(2)(ii) of this section;

(ii) Law as described in paragraph (b)(2)(iii) of this section;

(iii) Accounting as described in paragraph (b)(2)(iv) of this section;

(iv) Actuarial science as described in paragraph (b)(2)(v) of this section;

(v) Performing arts as described in paragraph (b)(2)(vi) of this section;

(vi) Consulting as described in paragraph (b)(2)(vii) of this section;

(vii) Athletics as described in paragraph (b)(2)(viii) of this section;

(viii) Financial services as described in paragraph (b)(2)(ix) of this section;

(ix) Brokerage services as described in paragraph (b)(2)(x) of this section;

(x) Investing and investment management as described in paragraph (b)(2)(xi) of this section;

(xi) Trading as described in paragraph (b)(2)(xii) of this section;

(xii) Dealing in securities (as defined in section 475(c)(2)), partnership interests, or commodities (as defined in section 475(e)(2)) as described in paragraph (b)(2)(xiii) of this section; or

(xiii) Any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners as defined in paragraph (b)(2)(xiv) of this section.

(2) *Additional rules for applying section 199A(d)(2) and paragraph (b) of this section*—(i) *In general.* This paragraph (b)(2) provides additional rules for determining whether a business is an SSTB within the meaning of section 199A(d)(2) and paragraph (b) of this section only. The rules of this paragraph (b)(2) may not be taken into account for purposes of applying any provision of law or regulation other than section 199A and the regulations thereunder except to the extent such provision expressly refers to section 199A(d) or this section.

(ii) *Meaning of services performed in the field of health.* For purposes of section 199A(d)(2) and paragraph (b)(1)(i) of this section only, the *performance of services in the field of health* means the provision of medical services by individuals such as physicians, pharmacists, nurses, dentists, veterinarians, physical therapists, psychologists and other similar healthcare professionals performing services in their capacity as such who provide medical services directly to a patient (service recipient). The performance of services in the field of health does not include the provision of services not directly related to a medical services field, even though the services provided may purportedly relate to the health of the service recipient. For example, the performance of services in the field of health does not include the operation of health clubs or health spas that provide physical exercise or conditioning to their customers, payment processing, or the research, testing, and manufacture and/or sales of pharmaceuticals or medical devices.

(iii) *Meaning of services performed in the field of law.* For purposes of section 199A(d)(2) and paragraph (b)(1)(ii) of this section only, the *performance of services in the field of law* means the performance of services by individuals such as lawyers, paralegals, legal arbitrators, mediators, and similar professionals performing services in their capacity as such. The performance of services in the field of law does not include the provision of services that do not require skills unique to the field of law, for example, the provision of services in the field of law does not include the provision of services by printers, delivery services, or stenography services.

(iv) *Meaning of services performed in the field of accounting.* For purposes of section 199A(d)(2) and paragraph (b)(1)(iii) of this section only, the *performance of services in the field of accounting* means the provision of services by individuals such as accountants, enrolled agents, return preparers, financial auditors, and similar professionals performing services in their capacity as such.

(v) *Meaning of services performed in the field of actuarial science.* For purposes of section 199A(d)(2) and paragraph (b)(1)(iv) of this section only, the *performance of services in the field of actuarial science* means the provision of services by individuals such as actuaries and similar professionals performing services in their capacity as such.

(vi) *Meaning of services performed in the field of performing arts.* For purposes of section 199A(d)(2) and paragraph (b)(1)(v) of this section only, the *performance of services in the field of the performing arts* means the performance of services by individuals who participate in the creation of performing arts, such as actors, singers, musicians, entertainers, directors, and similar professionals performing services in their capacity as such. The performance of services in the field of performing arts does not include the provision of services that do not require skills unique to the creation of performing arts, such as the maintenance and operation of equipment or facilities for use in the performing arts. Similarly, the performance of services in the field of the performing arts does not include the provision of services by persons who broadcast or otherwise disseminate video or audio of performing arts to the public.

(vii) *Meaning of services performed in the field of consulting.* For purposes of section 199A(d)(2) and paragraph (b)(1)(vi) of this section only, the *performance of services in the field of consulting* means the provision of professional advice and counsel to clients to assist the client in achieving goals and solving problems. Consulting includes providing advice and counsel regarding advocacy with the intention of influencing decisions made by a government or governmental agency and all attempts to influence legislators and other government officials on behalf of a client by lobbyists and other similar professionals performing services in their capacity as such. The performance of services in the field of consulting does not include the performance of services other than advice and counsel, such as sales or economically similar services or the provision of training and educational courses. For purposes of the preceding sentence, the determination of whether a person's services are sales or economically similar services will be based on all the facts and circumstances of that person's business. Such facts and circumstances include, for example, the manner in which the taxpayer is compensated for the services provided. Performance of services in the field of consulting does not include the performance of consulting services embedded in, or ancillary to, the sale of goods or performance of services on behalf of a trade or business that is otherwise not an SSTB (such as typical services provided by a building contractor) if there is no separate payment for the consulting services.

(viii) *Meaning of services performed in the field of athletics.* For purposes of section 199A(d)(2) and paragraph (b)(1)(vii) of this section only, the *performance of services in the field of athletics* means the performance of services by individuals who participate in athletic competition such as athletes, coaches, and team managers in sports such as baseball, basketball, football, soccer, hockey, martial arts, boxing, bowling, tennis, golf, skiing, snowboarding, track and field, billiards, and racing. The performance of services in the field of athletics does not include the provision of services that do not require skills unique to athletic competition, such as the maintenance and operation of equipment or facilities for use in athletic events. Similarly, the performance of services in the field of athletics does not include the provision of services by persons who broadcast or otherwise disseminate video or audio of athletic events to the public.

(ix) *Meaning of services performed in the field of financial services.* For purposes of section 199A(d)(2) and paragraph (b)(1)(viii) of this section only, the *performance of services in the field of financial services* means the provision of financial services to clients including managing wealth, advising clients with respect to finances, developing retirement plans, developing wealth transition plans, the provision of advisory and other similar services regarding valuations, mergers, acquisitions, dispositions, restructurings (including in title 11 or similar cases), and raising financial capital by underwriting, or acting as a client's agent in the issuance of securities and similar services. This includes services provided by financial advisors, investment bankers, wealth planners, and retirement advisors and other similar professionals performing services in their capacity as such.

(x) *Meaning of services performed in the field of brokerage services.* For purposes of section 199A(d)(2) and paragraph (b)(1)(ix) of this section only, the *performance of services in the field of brokerage services* includes services in which a person arranges transactions between a buyer and a seller with respect to securities (as defined in section 475(c)(2)) for a commission or fee. This includes services provided by stock brokers and other similar professionals, but does not include services provided by real estate agents and brokers, or insurance agents and brokers.

(xi) *Meaning of the provision of services in investing and investment management.* For purposes of section 199A(d)(2) and paragraph (b)(1)(x) of this section only, the *performance of services that consist of investing and investment management* refers to a trade or business involving the receipt of fees for providing investing, asset management, or investment management services, including providing advice with respect to buying and selling investments. The performance of services of investing and investment management does not include directly managing real property.

(xii) *Meaning of the provision of services in trading.* For purposes of section 199A(d)(2) and paragraph (b)(1)(xi) of this section only, the *performance of services that consist of trading* means a trade or business of trading in securities (as defined in section 475(c)(2)), commodities (as defined in section 475(e)(2)), or partnership interests. Whether a person is a trader in securities, commodities, or partnership interests is determined by taking into account all relevant facts and circumstances, including the source and type of profit that is associated with engaging in the activity regardless of whether that person trades for the person's own account, for the account of others, or any combination thereof. A taxpayer, such as a manufacturer or a farmer, who engages in hedging transactions as part of their trade or business of manufacturing or farming is not considered to be engaged in the trade or business of trading commodities.

(xiii) *Meaning of the provision of services in dealing*—(A) *Dealing in securities.* For purposes of section 199A(d)(2) and paragraph (b)(1)(xii) of this section only, *the performance of services that consist of dealing in securities (as defined in section 475(c)(2))* means regularly purchasing securities from and selling securities to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in securities with customers in the ordinary course of a trade or business. For purposes of the preceding sentence, however, a taxpayer that regularly originates loans in the ordinary course of a trade or business of making loans but engages in no more than negligible sales of the loans is not dealing in securities for purposes of section 199A(d)(2) and this section. See § 1.475(c)–1(c)(2) and (4) for the definition of negligible sales.

(B) *Dealing in commodities.* For purposes of section 199A(d)(2) and paragraph (b)(1)(xii) of this section only, *the performance of services that consist of dealing in commodities (as defined in section 475(e)(2))* means regularly purchasing commodities from and selling commodities to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in commodities with customers in the ordinary course of a trade or business.

(C) *Dealing in partnership interests.* For purposes of section 199A(d)(2) and paragraph (b)(1)(xii) of this section only, the performance of services that consist of dealing in partnership interests means regularly purchasing partnership interests from and selling partnership interests to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in partnership interests with customers in the ordinary course of a trade or business.

(xiv) *Meaning of trade or business where the principal asset of such trade or business is the reputation or skill of one or more employees or owners.* For purposes of section 199A(d)(2) and paragraph (b)(1)(xiii) of this section only, the term *any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners* means any trade or business that consists of any of the following (or any combination thereof):

(A) A trade or business in which a person receives fees, compensation, or other income for endorsing products or services,

(B) A trade or business in which a person licenses or receives fees, compensation or other income for the use of an individual's image, likeness, name, signature, voice, trademark, or any other symbols associated with the individual's identity,

(C) Receiving fees, compensation, or other income for appearing at an event or on radio, television, or another media format.

(D) For purposes of paragraph (b)(2)(xiv)(A) through (C) of this section, the term *fees, compensation, or other income* includes the receipt of a partnership interest and the corresponding distributive share of income, deduction, gain or loss from the partnership, or the receipt of stock of an S corporation and the corresponding income, deduction, gain or loss from the S corporation stock.

(3) *Examples.* The following examples illustrate the rules in paragraphs (a) and (b) of this section. The examples do not address all types of services that may or may not qualify as specified services. Unless otherwise provided, the individual in each example has taxable income in excess of the threshold amount.

Example 1 to paragraph (b)(3). A, a singer, records a song. A is paid a mechanical royalty when the song is licensed or streamed. A is also paid a performance royalty when the recorded song is played publicly. A is engaged in the performance of services in an SSTB in the field of performing arts within the meaning of paragraphs (b)(1)(v) and (b)(2)(vi) of this section. The royalties that A receives for the song are not eligible for a deduction under section 199A.

Example 2 to paragraph (b)(3). B is a partner in Partnership, which solely owns and operates a professional sports team. Partnership employs athletes and sells tickets to the public to attend games in which the sports team competes. Therefore, Partnership is engaged in the performance of services in an SSTB in the field of athletics within the meaning of paragraphs (b)(1)(vii) and (b)(2)(viii) of this section. B is a passive owner in Partnership and B does not provide any services with respect to Partnership or the sports team. However, because Partnership is engaged in an SSTB in the field of athletics, B's distributive share of the income, gain, loss, and deduction with respect to Partnership is not eligible for a deduction under section 199A.

Example 3 to paragraph (b)(3). C is in the business of providing services that assist unrelated entities in making their personnel structures more efficient. C studies its client's organization and structure and compares it to peers in its industry. C then makes recommendations and provides advice to its client regarding possible changes in the client's personnel structure, including the use of temporary workers. C is engaged in the performance of services in an SSTB in the field of consulting within the meaning of paragraphs (b)(1)(vi) and (b)(2)(vii) of this section.

Example 4 to paragraph (b)(3). D is in the business of licensing software to customers. D discusses and evaluates the customer's software needs with the customer. The taxpayer advises the customer on the particular software products it licenses. D is paid a flat price for the software license. After the customer licenses the software, D helps to implement the software. D is engaged in the trade or business of licensing software and not engaged in an SSTB in the field of consulting within the meaning of paragraphs (b)(1)(vi) and (b)(2)(vii) of this section.

Example 5 to paragraph (b)(3). E is in the business of providing services to assist clients with their finances. E will study a particular client's financial situation, including, the client's present income, savings and investments, and anticipated future economic and financial needs. Based on this study, E will then assist the client in making decisions and plans regarding the client's financial activities. Such financial planning includes the design of a personal budget to assist the client in monitoring the client's financial situation, the adoption of investment strategies tailored to the client's needs, and other similar services. E is engaged in the performance of services in an SSTB in the field of financial services within the meaning of paragraphs (b)(1)(viii) and (b)(2)(ix) of this section.

Example 6 to paragraph (b)(3). F is in the business of executing transactions for customers involving various types of securities or commodities generally traded through organized exchanges or other similar networks. Customers place orders with F to trade securities or commodities based on the taxpayer's recommendations. F's compensation for its services typically is based on completion of the trade orders. F is engaged in an SSTB in the field of brokerage services within the meaning of paragraphs (b)(1)(ix) and (b)(2)(x) of this section.

Example 7 to paragraph (b)(3). G owns 100% of Corp, an S corporation, which operates a bicycle sales and repair business. Corp has 8 employees, including G. Half of Corp's net income is generated from sales of new and used bicycles and related goods, such as helmets, and bicycle-related equipment. The other half of Corp's net income is generated from bicycle repair services performed by G and Corp's other employees. Corp's assets consist of inventory, fixtures, bicycle repair equipment, and a leasehold on its retail location. Several of the employees and G have worked in the bicycle business for many years, and have acquired substantial skill and reputation in the field. Customers often consult with the employees on the best bicycle for purchase. G is in the business of sales and repairs of bicycles and is not engaged in an SSTB within the meaning of paragraphs (b)(1)(xiii) and (b)(2)(xiv) of this section.

Example 8 to paragraph (b)(3). H is a well-known chef and the sole owner of multiple restaurants each of which is owned in a disregarded entity. Due to H's skill and reputation as a chef, H receives an endorsement fee of $500,000 for the use of H's name on a line of cooking utensils and cookware. H is in the trade or business of being a chef and owning restaurants and such trade or business is not an SSTB. However, H is also in the trade or business of receiving endorsement income. H's trade or business consisting of the receipt of the endorsement fee for H's skill and/or reputation is an SSTB within the meaning of paragraphs (b)(1)(xiii) and (b)(2)(xiv) of this section.

Example 9 to paragraph (b)(3). J is a well-known actor. J entered into a partnership with Shoe Company, in which J contributed her likeness and the use of her name to the partnership in exchange for a 50% interest in the capital and profits of the partnership and a guaranteed payment. J's trade or business consisting of the receipt of the partnership interest and the corresponding distributive share with respect to the partnership interest for J's likeness and the use of her name is an SSTB within the meaning of paragraphs (b)(1)(xiii) and (b)(2)(xiv) of this section.

(c) *Special rules.* (1) *De minimis rule.*—(i) *Gross receipts of $25 million or less.* For a trade or business with gross receipts of $25 million dollars or less for the taxable year, a trade or business is not an SSTB if less than 10 percent of the gross receipts of the trade or business are attributable to the performance of services in a field described in paragraph (b) of this section. For purposes of determining whether this 10 percent test is satisfied, the performance of any activity incident to the actual performance of services in the field is considered the performance of services in that field.

(ii) *Gross receipts of greater than $25 million.* For a trade or business with gross receipts of greater than $25 million for the taxable year, the rules of paragraph (c)(1)(i) of this section are applied by substituting ''5 percent'' for ''10 percent'' each place it appears.

(2) *Services or property provided to an SSTB*—(i) *In general.* An SSTB includes any trade or business that provides 80 percent or more of its property or services to an SSTB if there is 50 percent or more common ownership of the trades or businesses.

(ii) *Less than substantially all of property or services provided.* If a trade or business provides less than 80 percent of its property or services to an SSTB within the meaning of this section and there is 50 percent or more common ownership of the trades or businesses, that portion of the trade or business of providing property or services to the 50 percent or more commonly-owned SSTB is treated as a part of the SSTB.

(iii) *50 percent or more common ownership.* For purposes of paragraphs (c)(2)(i) and (ii) of this section, 50 percent or more common ownership includes direct or indirect ownership by related parties within the meaning of sections 267(b) or 707(b).

(iv) Example. Law Firm is a partnership that provides legal services to clients, owns its own office building and employs its own administrative staff. Law Firm divides into three partnerships. Partnership 1 performs legal services to clients. Partnership 2 owns the office building and rents the entire building to Partnership 1. Partnership 3 employs the administrative staff and through a contract with Partnership 1 provides administrative services to Partnership 1 in exchange for fees. All three of the partnerships are owned by the same people (the original owners of Law Firm). Because there is 50% or more common ownership of each of the three partnerships, Partnership 2 provides substantially all of its property to Partnership 1, and Partnership 3 provides substantially all of its services to Partnership 1, Partnerships 1, 2, and 3 will be treated as one SSTB under paragraph (a)(6) of this section.

(3) *Incidental to specified service trade or business*—(i) *In general.* If a trade or business (that would not otherwise be treated as an SSTB) has 50 percent or more common ownership with an SSTB, including related parties (within the meaning of sections 267(b) or 707(b)), and has shared expenses with the SSTB, including shared wage or overhead expenses, then such trade or business is treated as incidental to and, therefore, part of the SSTB within the meaning of this section if the gross receipts of the trade or business represents no more than 5 percent of the total combined gross receipts of the trade or business and the SSTB in a taxable year.

(ii) Example. A, a dermatologist, provides medical services to patients on a regular basis through Dermatology LLC, a disregarded entity owned by A. In addition to providing medical services, Dermatology LLC also sells skin care products to A's patients. The same employees and office space are used for the medical services and sale of skin care products. The gross receipts with respect to the skin care product sales do not exceed 5% of the gross receipts of Dermatology LLC. Accordingly, the sale of the skin care products is treated as incidental to A's SSTB of performing services in the field of health (within the meaning of paragraph (b)(1)(i) and (b)(2)(ii) of this section) and is treated under paragraph (c)(3) of this section as part of such SSTB.

(d) *Trade or business of performing services as an employee*—(1) *In general.* The trade or business of performing services as an employee is not a trade or business for purposes of section 199A and the regulations thereunder. Therefore, no items of income, gain, loss, and deduction from the trade or business of performing services as an employee constitute QBI within the meaning of section 199A and § 1.199A–3. Except as provided in paragraph (d)(3) of this section, income from the trade or business of performing services as an employee refers to all wages (within the meaning of section 3401(a)) and other income earned in a capacity as an employee, including payments described in § 1.6041–2(a)(1) (other than payments to individuals described in section 3121(d)(3)) and § 1.6041–2(b)(1).

(2) *Employer's Federal employment tax classification of employee immaterial.* For purposes of determining whether wages are earned in a capacity as an employee as provided in paragraph (d)(1) of this section, the treatment of an employee by an employer as anything other than an employee for Federal employment tax purposes is immaterial. Thus, if a worker should be properly classified as an employee, it is of no consequence that the employee is treated as a non-employee by the employer for Federal employment tax purposes.

(3) *Presumption that former employees are still employees*—(i) *Presumption.* Solely for purposes of section 199A(d)(1)(B) and paragraph (d)(1) of this section, an individual that was properly treated as an employee for Federal employment tax purposes by the person to which he or she provided services and who is subsequently treated as other than an employee by such person with regard to the provision of substantially the same services directly or indirectly to the person (or a related person), is presumed to be in the trade or business of performing services as an employee with regard to such services. This presumption may be rebutted upon a showing by the individual that, under Federal tax law, regulations, and principles (including common-law employee classification rules), the individual is performing services in a capacity other than as an employee. This presumption applies regardless of whether the individual provides services directly or indirectly through an entity or entities.

(ii) *Examples.* The following examples illustrate the provision of paragraph (b)(3)(i) of this section. Unless otherwise provided, the individual in each example has taxable income in excess of the threshold amount.

Example 1 to paragraph (d)(3). A is employed by PRS, a partnership, as a fulltime employee and is treated as such for Federal employment tax purposes. A quits his job for PRS and enters into a contract with PRS under which A provides substantially the same services that A previously provided to PRS in A's capacity as an employee. Because A was treated as an employee for services he provided to PRS, and now is no longer treated as an employee with regard to such services, A is presumed (solely for purposes of section 199A(d)(1)(B) and paragraphs (a)(3) and (d) of this section) to be in the trade or business of performing services as an employee with regard to his services performed for PRS. Unless the presumption is rebutted with a showing that, under Federal tax law, regulations, and principles (including the common-law employee classification rules), A is not an employee, any amounts paid by PRS to A with respect to such services will not be QBI for purposes of section 199A. The presumption would apply even if, instead of contracting directly with PRS, A formed a disregarded entity, or an S corporation, and the disregarded entity or the S corporation entered into the contract with PRS.

Example 2 to paragraph (d)(3). C is an attorney employed as an associate in a law firm (Law Firm 1) and was treated as such for Federal employment tax purposes. C and the other associates in Law Firm 1 have taxable income below the threshold amount. Law Firm 1 terminates its employment relationship with C and its other associates. C and the other former associates form a new partnership, Law Firm 2, which contracts to perform legal services for Law Firm 1. Therefore, in form, C is now a partner in Law Firm 2 which earns income from providing legal services to Law Firm 1. C continues to provide substantially the same legal services to Law Firm 1 and its clients. Because C was previously treated as an employee for services she provided to Law Firm 1, and now is no longer treated as an employee with regard to such services, C is presumed (solely for purposes of section 199A(d)(1)(B) and paragraphs (a)(3) and (d) of this section) to be in the trade or business of performing services as an employee with respect to the services C provides to Law Firm 1 indirectly through Law Firm 2. Unless the presumption is rebutted with a showing that, under Federal tax law, regulations, and principles (including common-law employee classification rules), C's distributive share of Law Firm 2 income (including any guaranteed payments) will not be QBI for purposes of section 199A. The results in this example would not change if, instead of contracting with Law Firm 1, Law Firm 2 was instead admitted as a partner in Law Firm 1.

Example 3 to paragraph (d)(3). E is an engineer employed as a senior project engineer in an engineering firm, Engineering Firm. Engineering Firm is a partnership and structured such that after 10 years, senior project engineers are considered for partner if certain career milestones are met. After 10 years, E meets those career milestones and is admitted as a partner in Engineering Firm. As a partner in Engineering Firm, E shares in the net profits of Engineering Firm, and also otherwise satisfies the requirements under Federal tax law, regulations, and principles (including common-law employee classification rules) to be respected as a partner. E is presumed (solely for purposes of section 199A(d)(1)(B) and paragraphs (a)(3) and (d) of this section) to be in the trade or business of performing services as an employee with respect to the services E provides to Engineering Firm. However, E is able to rebut the presumption by showing that E became a partner in Engineering Firm as a career milestone, shares in the overall net profits in Engineering Firm, and otherwise satisfies the requirements under Federal tax law, regulations, and principles (including common-law employee classification rules) to be respected as a partner.

(e) *Effective/applicability date*—(1) *General rule.* Except as provided in paragraph (e)(2) of this section, the provisions of this section apply to taxable years ending after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. However, taxpayers may rely on the rules of this section until the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

(2) *Exceptions*—(i) *Anti-abuse rules.* The provisions of paragraphs (c)(2), (c)(3), and (d)(3) of this section apply to taxable years ending after December 22, 2017.

(ii) *Non-calendar year RPE.* For purposes of determining QBI, W–2 wages, and UBIA of qualified property, if an individual receives any of these items from an RPE with a taxable year that begins before January 1, 2018 and ends after December 31, 2017, such items are treated as having been incurred by the individual during the individual's taxable year in which or with which such RPE taxable year ends.

■ **Par. 8.** Section 1.199A–6 is added to read as follows:

§ 1.199A–6 Relevant passthrough entities (RPEs), publicly traded partnerships (PTPs), trusts, and estates.

(a) *Overview.* This section provides special rules for RPEs, PTPs, trusts, and estates necessary for the computation of the section 199A deduction of their owners or beneficiaries. Paragraph (b) of this section provides computational and reporting rules for RPEs necessary for individuals who own interests in RPEs to calculate their section 199A deduction. Paragraph (c) of this section provides computational and reporting rules for PTPs necessary for individuals who own interests in PTPs to calculate their section 199A deduction. Paragraph (d) of this section provides computational and reporting rules for trusts (other than grantor trusts) and estates necessary for their beneficiaries to calculate their section 199A deduction.

(b) *Computational and reporting rules for RPEs*—(1) *In general.* An RPE must determine and report information attributable to any trades or businesses it is engaged in necessary for its owners to determine their section 199A deduction.

(2) *Computational rules.* Using the following four rules, an RPE must determine the items necessary for individuals who own interests in the RPE to calculate their section 199A deduction under § 1.199A–1(c) or (d):

(i) First, the RPE must determine if it is engaged in one or more trades or businesses. The RPE must also determine whether any of its trades or businesses is an SSTB under the rules of § 1.199A–5.

(ii) Second, the RPE must apply the rules in § 1.199A–3 to determine the QBI for each trade or business engaged in directly.

(iii) Third, the RPE must apply the rules in § 1.199A–2 to determine the W–2 wages and UBIA of qualified property for each trade or business engaged in directly.

(iv) Fourth, the RPE must determine whether it has any qualified REIT dividends as defined in 1.199A–3(c)(1) earned directly or through another RPE. The RPE must also determine the net amount of qualified PTP income as defined in § 1.199A–3(c)(2) earned directly or indirectly through investments in PTPs.

(3) *Reporting rules for RPEs*—(i) *Trade or business directly engaged in.* An RPE must separately identify and report on the Schedule K–1 issued to its owners for any trade or business engaged in directly by the RPE—

(A) Each owner's allocable share of QBI, W–2 wages, and UBIA of qualified property attributable to each such trade or business, and

(B) Whether any of the trades or businesses described in paragraph (b)(3)(i)(A) of this section is an SSTB.

(ii) *Other items.* An RPE must also report on an attachment to the Schedule K–1, any QBI, W–2 wages, UBIA of qualified property, or SSTB determinations, reported to it by any RPE in which the RPE owns a direct or indirect interest. The RPE must also report each owner's allocated share of any qualified REIT dividends or qualified PTP income or loss received by the RPE (including through another RPE).

(iii) *Failure to report information.* If an RPE fails to separately identify or report on the Schedule K–1 (or any attachments thereto) issued to an owner any items described in paragraph (b)(3)(i) of this section, the owner's share (and the share of any upper-tier indirect owner) of positive QBI, W–2 wages, and UBIA of qualified property attributable to trades or businesses engaged in by that RPE will be presumed to be zero.

(c) *Computational and reporting rules for PTPs*—(1) *Computational rules.* Each PTP must determine its QBI under the rules of § 1.199A–3 for each trade or business in which the PTP is engaged in directly. The PTP must also determine whether any of the trades or businesses it is engaged in directly is an SSTB.

(2) *Reporting rules.* Each PTP is required to separately identify and report the information described in paragraph (c)(1) of this section on Schedules K–1 issued to its partners. Each PTP must also determine and report any qualified REIT dividends or qualified PTP income or loss received by the PTP including through an RPE, a REIT, or another PTP. A PTP is not required to determine or report W–2 wages or the UBIA of qualified property attributable to trades or businesses it is engaged in directly.

(d) *Application to trusts, estates, and beneficiaries*—(1) *In general.* A trust or estate computes its section 199A deduction based on the QBI, W–2 wages, UBIA of qualified property, qualified REIT dividends, and qualified PTP income that are allocated to the trust or estate. An individual beneficiary of a trust or estate takes into account any QBI, W–2 wages, UBIA of qualified property, qualified REIT dividends, and qualified PTP income allocated from a trust or estate in calculating the beneficiary's section 199A deduction, in the same manner as though the items had been allocated from an RPE. For purposes of this section and §§ 1.199A–1 through 1.199A–5, a trust or estate is treated as an RPE to the extent it allocates QBI and other items to its beneficiaries, and is treated as an individual to the extent it retains the QBI and other items.

(2) *Grantor trusts.* To the extent that the grantor or another person is treated as owning all or part of a trust under sections 671 through 679, such person computes its section 199A deduction as if that person directly conducted the activities of the trust with respect to the portion of the trust treated as owned by the grantor or another person.

(3) *Non-grantor trusts and estates*—(i) *Calculation at entity level.* A trust or estate must calculate its QBI, W–2 wages, UBIA of qualified property, qualified REIT dividends, and qualified PTP income. The QBI of a trust or estate must be computed by allocating qualified items of deduction described in section 199A(c)(3) in accordance with the classification of those deductions under § 1.652(b)–3(a), and deductions not directly attributable within the meaning of § 1.652(b)–3(b) (other deductions) are allocated in a manner consistent with the rules in § 1.652(b)–3(b). Any depletion and depreciation deductions described in section 642(e) and any amortization deductions described in section 642(f) that otherwise are properly included in the computation of QBI are included in the computation of QBI of the trust or estate, regardless of how those deductions may otherwise be allocated between the trust or estate and its beneficiaries for other purposes of the Code.

(ii) *Allocation among trust or estate and beneficiaries.* The QBI (including any amounts that may be less than zero as calculated at the trust or estate level), W–2 wages, UBIA of qualified property, qualified REIT dividends, and qualified PTP income of a trust or estate are allocated to each beneficiary and to the trust or estate based on the relative proportion of the trust's or estate's distributable net income (DNI), as defined by section 643(a), for the taxable year that is distributed or required to be distributed to the beneficiary or is retained by the trust or estate. For this purpose, the trust's or estate's DNI is determined with regard to the separate share rule of section 663(c), but without regard to section 199A. If the trust or estate has no DNI for the taxable year, any QBI, W–2 wages, UBIA of qualified property, qualified REIT dividends, and qualified PTP income are allocated entirely to the trust or estate.

(iii) *Threshold amount.* The threshold amount applicable to a trust or estate is $157,500 for any taxable year beginning before 2019. For taxable years beginning after 2018, the threshold amount shall be $157,500 increased by the cost-of-living adjustment as outlined in § 1.199A–1(b)(11). For purposes of determining whether a trust or estate has taxable income that exceeds the threshold amount, the taxable income of a trust or estate is determined before taking into account any distribution deduction under sections 651 or 661.

(iv) *Electing small business trusts.* An electing small business trust (ESBT) is entitled to the deduction under section 199A. The S portion of the ESBT must take into account the QBI and other items from any S corporation owned by the ESBT, the grantor portion of the ESBT must take into account the QBI and other items from any assets treated as owned by a grantor or another person (owned portion) of a trust under sections 671 through 679, and the non-S portion of the ESBT must take into account any QBI and other items from any other entities or assets owned by the ESBT. See § 1.641(c)–1.

(v) *Anti-abuse rule for creation of multiple trusts to avoid exceeding the threshold amount.* Trusts formed or funded with a significant purpose of receiving a deduction under section 199A will not be respected for purposes of section 199A. See also § 1.643(f)–1 of the regulations.

(vi) The following example illustrates the application of paragraph (d) of this section.

Example 1 to (d)(3)(vi). (i) *Computation of DNI and inclusion and deduction amounts.* (A) *Trust's distributive share of partnership items.* Trust, an irrevocable testamentary complex trust, is a 25% partner in PRS, a family partnership that operates a restaurant that generates QBI and W–2 wages. In 2018, PRS properly allocates gross income from the restaurant of $55,000, and expenses directly allocable to the restaurant of $50,000 (including W–2 wages of $25,000, miscellaneous expenses of $20,000, and depreciation deductions of $5,000) to Trust. These items are properly included in Trust's DNI. Trust's share of PRS' unadjusted basis of qualified depreciable property is $125,000. PRS distributes $5,000 of cash to Trust in 2018.

(B) *Trust's activities.* In addition to its interest in PRS, Trust also operates a family bakery conducted through an LLC wholly-owned by the Trust that is treated as a disregarded entity. In 2018, the bakery produced $100,000 of gross income and $150,000 of expenses directly allocable to operation of the bakery (including W–2 wages of $50,000, rental expense of $75,000, and miscellaneous expenses of $25,000). (The net loss from the bakery operations is not subject to any loss disallowance provisions outside of section 199A.) Trust also has zero unadjusted basis of qualified depreciable property in the bakery. For purposes of computing its section 199A deduction, Trust has properly chosen to aggregate the family restaurant conducted through PRS with the bakery conducted directly by Trust under § 1.199A–4. Trust also owns various investment assets that produce portfolio-type income consisting of dividends ($25,000), interest ($15,000), and tax-exempt interest ($15,000). Accordingly, Trust has the following items which are properly included in Trust's DNI:

Interest Income	15,000
Dividends	25,000
Tax-exempt interest	15,000
Net business loss from PRS and bakery	(45,000)
Trustee commissions	3,000
State and local taxes	5,000

(C) *Allocation of deductions under § 1.652(b)–3.* (*1*) *Directly attributable expenses.* In computing Trust's DNI for the taxable year, the distributive share of expenses of PRS are directly attributable under § 1.652(b)–3(a) to the distributive share of income of PRS. Accordingly, Trust has gross business income of $155,000 (55,000 from PRS and 100,000 from the bakery) and direct business expenses of $200,000 ($50,000 from PRS and $150,000 from the bakery). In addition, $1,000 of the trustee commissions and $1,000 of state and local taxes are directly attributable under § 1.652(b)–3(a) to Trust's business income. Accordingly, Trust has excess business deductions of $47,000. Pursuant to its authority recognized under § 1.652(b)–3(d), Trust allocates the $47,000 excess business deductions as follows: $15,000 to the interest income, resulting in $0 interest income, $25,000 to the dividends, resulting in $0 dividend income, and $7,000 to the tax exempt interest.

(*2*) *Non-directly attributable expenses.* The trustee must allocate the sum of the balance of the trustee commissions ($2,000) and state and local taxes ($4,000) to Trust's remaining tax-exempt interest income, resulting in $2,000 of tax exempt interest.

(D) *Amounts included in taxable income.* For 2018, Trust has DNI of $2,000. Pursuant to Trust's governing instrument, Trustee distributes 50%, or $1,000, of that DNI to A, an individual who is a discretionary beneficiary of Trust. In addition, Trustee is required to distribute 25%, or $500, of that DNI to B, a current income beneficiary of Trust. Trust retains the remaining 25% of DNI. Consequently, with respect to the $1,000 distribution A receives from Trust, A properly excludes $1,000 of tax-exempt interest income under section 662(b). With respect to the $500 distribution B receives from Trust, B properly excludes $500 of tax exempt interest income under section 662(b). Because the DNI consists entirely of tax-exempt income, Trust deducts $0 under section 661 with respect to the distributions to A and B.

(ii) *Section 199A deduction.* (A) *Trust's W–2 wages and QBI.* For the 2018 taxable year, Trust has $75,000 ($25,000 from PRS + $50,000 of Trust) of W–2 wages. Trust also has $125,000 of unadjusted basis in qualified depreciable property. Trust has negative QBI of ($47,000) ($155,000 gross income from aggregated businesses less the sum of $200,000 direct expenses from aggregated businesses and $2,000 directly attributable business expenses from Trust under the rules of § 1.652(b)–3(a)).

(B) *Section 199A deduction computation.* (*1*) *A's computation.* Because the $1,000 Trust distribution to A equals one-half of Trust's DNI, A has W–2 wages from Trust of $37,500. A also has W–2 wages of $2,500 from a trade or business outside of Trust (computed without regard to A's interest in Trust), which A has properly aggregated under § 1.199A–4 with the Trust's trade or businesses (the family's restaurant and bakery), for a total of $40,000 of W–2 wages from the aggregate trade or businesses. A has $100,000 of QBI from non-Trust trade or businesses in which A owns an interest. Because the $1,000 Trust distribution to A equals one-half of Trust's DNI, A has (negative) QBI from Trust of ($23,500). A's total QBI is determined by combining the $100,000 QBI from non-Trust sources with the ($23,500) QBI from Trust for a total of $76,500 of QBI. Assume that A's taxable income exceeds the threshold amount for 2018 by $200,000. A's tentative deduction is $15,300 (.20 × $76,500), limited under the W–2 wage limitation to $20,000 (50% × $40,000 W–2 wages). Accordingly, A's section 199A deduction for 2018 is $15,300.

(*2*) *B's computation.* For 2018, B's taxable income is below the threshold amount so B is not subject to the W–2 wage limitation. Because the $500 Trust distribution to B equals one-quarter of Trust's DNI, B has a total of ($11,750) of QBI. B also has no QBI from non-Trust trades or businesses, so B has a total of ($11,750) of QBI. Accordingly, B's section 199A deduction for 2018 is zero. The ($11,750) of QBI is carried over to 2019 as a loss from a qualified business in the hands of B pursuant to section 199A(c)(2).

(*3*) *Trust's computation.* For 2018, Trust's taxable income is below the threshold amount so it is not subject to the W–2 wage limitation. Because Trust retained 25% of Trust's DNI, Trust is allocated 25% of its QBI, which is ($11,750). Trust's section 199A deduction for 2018 is zero. The ($11,750) of QBI is carried over to 2019 as a loss from a qualified business in the hands of Trust pursuant to section 199A(c)(2).

(e) *Effective/applicability date*—(1) *General rule.* Except as provided in paragraph (e)(2) of this section, the provisions of this section apply to taxable years ending after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. However, taxpayers may rely on the rules of this section until the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

(2) *Exceptions*—(i) *Anti-abuse rules.* The provisions of paragraph (d)(3)(v) of this section apply to taxable years ending after December 22, 2017.

(ii) *Non-calendar year RPE.* For purposes of determining QBI, W–2 wages, and UBIA of qualified property, if an individual receives any of these items from an RPE with a taxable year that begins before January 1, 2018 and ends after December 31, 2017, such items are treated as having been incurred by the individual during the individual's taxable year in which or with which such RPE taxable year ends.

■ **Par. 9.** Section 1.643(f)–1 is added to read as follows:

§ 1.643(f)–1 Treatment of multiple trusts.

(a) *General rule.* For purposes of subchapter J of chapter 1 of Title 26 of the United States Code, two or more trusts will be aggregated and treated as a single trust if such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and if a principal purpose for establishing such trusts or for contributing additional cash or other property to such trusts is the avoidance of Federal income tax. For purposes of applying this rule, spouses will be treated as one person.

(b) *A principal purpose.* A principal purpose for establishing or funding a trust will be presumed if it results in a significant income tax benefit unless there is a significant non-tax (or non-income tax) purpose that could not have been achieved without the creation of these separate trusts.

(c) *Examples.* The following examples illustrate the application of this section:

Example 1 to paragraph (c). (i) A owns and operates a pizzeria and several gas stations. A's annual income from these businesses and other sources exceeds the threshold amount in section 199A(e)(2), and the W–2 wages properly allocable to these businesses are not sufficient for A to maximize the deduction allowable under section 199A. A reads an article in a magazine that suggests that taxpayers can avoid the W–2 wage limitation of section 199A by contributing portions of their family businesses to multiple identical trusts established for family members. Based on this advice, in 2018, A establishes three irrevocable, non-grantor trusts: Trust 1 for the benefit of A's sister, B, and A's brothers, C and D; Trust 2 for the benefit of A's second sister, E, and for C and D; and Trust 3 for the benefit of E. Under each trust instrument, the trustee is given discretion to pay any current or accumulated income to any one or more of the beneficiaries. The trust agreements otherwise have nearly identical terms. But for the enactment of section 199A and A's desire to avoid the W–2 wage limitation of that provision, A would not have created or funded such trusts. A names A's oldest son, F, as the trustee for each trust. A forms a family limited partnership, and contributes the ownership interests in the pizzeria and gas stations to the partnership in exchange for a 50-percent general partner interest and a 50-percent limited partner interest. A later contributes to each trust a 15% limited partner interest. Under the partnership agreement, the trustee does not have any power or discretion to manage the partnership or any of its businesses on behalf of the trusts, or to dispose of the limited partnership interests without the approval of the general partner. Each of the trusts claims the section 199A deduction on its Form 1041 in full based on the amount of qualified business income (QBI) allocable to that trust from the limited partnership, as if such trust was not subject to the wage limitation in section 199A(b)(2)(B).

(ii) Under these facts, for Federal income tax purposes under this section, Trust 1, Trust 2, and Trust 3 would be aggregated and treated as a single trust.

Example 2 to paragraph (c). (i) X establishes two irrevocable trusts: One for the benefit of X's son, G, and the other for X's daughter, H. G is the income beneficiary of the first trust and the trustee is required to apply all income currently to G for G's life. H is the remainder beneficiary of the first trust. H is an income beneficiary of the second trust and the trust instrument permits the trustee to accumulate or to pay income, in its discretion, to H for H's education, support, and maintenance. The trustee also may pay income or corpus for G's medical expenses. H is the remainder beneficiary of the second trust and will receive the trust corpus upon G's death.

(ii) Under these facts, there are significant non-tax differences between the substantive terms of the two trusts, so tax avoidance will not be presumed to be a principal purpose for the establishment or funding of the separate trusts. Accordingly, in the absence of other facts or circumstances that would indicate that a principal purpose for creating the two separate trusts was income tax avoidance, the two trusts will not be aggregated and treated as a single trust for Federal income tax purposes under this section.

(d) *Effective/applicability date.* The provisions of this section apply to taxable years ending after August 16, 2018.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

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