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Presidential Documents

Title 3—

The President

Presidential Determination No. 2018–13 of September 28, 2018

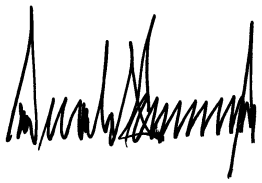
Presidential Determination With Respect to the Child Soldiers Prevention Act of 2008

Memorandum for the Secretary of State

Pursuant to section 404 of the Child Soldiers Prevention Act of 2008 (22 U.S.C. 2370c–1) (CSPA), I hereby determine as follows:

It is in the national interest of the United States to waive the application of the prohibition in section 404(a) of the CSPA with respect to Iraq, Mali, Niger, and Nigeria; to waive the application of the prohibition in section 404(a) of the CSPA with respect to Somalia to allow for the provision of International Military Education and Training assistance, Peacekeeping Operations (PKO) assistance, and support provided pursuant to 10 U.S.C. 333, to the extent the CSPA would restrict such assistance or support; to waive the application of the prohibition in section 404(a) of the CSPA with respect to South Sudan to allow for PKO assistance, to the extent the CSPA would restrict such assistance or support; and to waive the application of the prohibition in section 404(a) of the CSPA with respect to Yemen to allow for PKO assistance, to the extent the CSPA would restrict such assistance or support. Accordingly, I hereby waive such applications of section 404(a) of the CSPA.

You are authorized and directed to submit this determination to the Congress, along with the Memorandum of Justification, and to publish the determination in the *Federal Register*.



THE WHITE HOUSE,
Washington, September 28, 2018

[FR Doc. 2018–23245
Filed 10–22–18; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[Doc. No. AMS–LPS–18–0015]

Soybean Promotion and Research: Amend the Order To Adjust Representation on the United Soybean Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will adjust the number of members on the United Soybean Board (Board) to reflect changes in production levels that have occurred since the Board was last reapportioned in 2015. As required by the Soybean Promotion, Research, and Consumer Information Act (Act), membership on the Board is reviewed every 3 years and adjustments are made accordingly. This change will result in an increase in Board membership for five States, increasing the total number of Board members from 73 to 78. These changes will be reflected in the Soybean Promotion and Research Order (Order) and would be effective for the 2019 appointment process.

DATES: This rule is effective as of November 23, 2018.

FOR FURTHER INFORMATION CONTACT: Mike Dinkel, (202) 720–0633, *Michael.Dinkel@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order (E.O.) 12866 for this action.

Executive Order 12988

This final rule was reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have a retroactive effect. This action would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Act (7 U.S.C. 6306), a person subject to the Soybean Promotion and Research Order (7 CFR part 1220, subpart A (hereinafter referred to as the Order)) may file a petition with USDA stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law and request a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Act provides that district courts of the United States in any district in which such person is an inhabitant, or has his or her principal place of business, have jurisdiction to review USDA's ruling on the petition if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612 *et seq.*), AMS has considered the economic effect of this final rule on small entities and has determined that this action does not have a significant economic impact on a substantial number of small businesses entities because it only adjusts representation on the Board to reflect changes in production levels that have occurred since the Board was last reapportioned in 2015. The purposed of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small business will not be unduly burdened.

There are an estimated 515,008 soybean producers and an estimated 10,000 first purchasers who collect the assessment, most of whom would be considered small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. SBA defines small agricultural producers as those having annual receipts of less than $750,000.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the reporting and recordkeeping requirements included in 7 CFR part 1220 were previously approved by OMB and were assigned control number 0581–0093.

Background and Proposed Changes

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 percent of the net market price of soybeans sold by producers. Pursuant to the Act, the Order, which established an initial Board with 60 members, became effective July 9, 1991. For purposes of establishing the Board, the United States was divided into 31 States and geographical units. Representation on the Board from each unit was determined by the level of production in each unit. The initial Board was appointed on July 11, 1991. The Board is comprised of soybean producers. Section 1220.201(c) of the Order provides that at the end of each 3-year period, the Board shall review soybean production levels in the geographic units throughout the United States. The Board may recommend to the Secretary of Agriculture modifications in the levels of production necessary to determine Board membership for each unit.

Section 1220.201(d) of the Order provides that at the end of each 3-year period, the Secretary must review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the criteria set forth in § 1220.201(e): (1) To the extent practicable, States with annual average soybean production of less than 3 million bushels shall be grouped into geographically contiguous units, each of which has a combined production level equal to or greater than 3 million bushels, and each such group shall be entitled to at least one member on the Board; (2) units with at least 3 million bushels, but fewer than 15 million bushels shall be entitled to one board member; (3) units with 15 million bushels or more but fewer than 70 million bushels shall be entitled to two Board members; (4) units with 70

million bushels or more but fewer than 200 million bushels shall be entitled to three Board members; and (5) units with 200 million bushels or more shall be entitled to four Board members.

The Board was last reapportioned in 2015. The total Board membership increased from 70 to 73 members, with Missouri, New Jersey, and Wisconsin each gaining one additional member. The final rule was published in the **Federal Register** (80 FR 63909) on October 22, 2015. This change was effective with the 2016 appointments.

This final rule will increase total membership on the Board from 73 to 78, based on production data for years 2013–2017 (excluding the crops in years in which production was the highest and in which production was the lowest) as reported by USDA's National Agricultural Statistics Service. This change will not affect the number of geographical units.

This final rule will adjust representation on the Board as follows:

State	Current representation	Proposed representation
Alabama	1	2
Kentucky	2	3
North Dakota	3	4
South Dakota	3	4
Tennessee	2	3

Board adjustments will become effective with the 2019 appointment process.

Comments

A proposed rule was published in the **Federal Register** (83 FR 31477) on July 6, 2018, with a 60-day comment period. USDA received no comments.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Reporting and recordkeeping requirements, Soybeans.

For the reasons set forth in the preamble, 7 CFR part 1220 is amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 1. The authority citation for 7 CFR part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311 and 7 U.S.C. 7401.

■ 2. In § 1220.201, the table in paragraph (a) is revised to read as follows:

§ 1220.201 Membership of board.

(a) * * *

Unit	Number of members
South Dakota	4
Ohio	4
North Dakota	4
Nebraska	4
Missouri	4
Minnesota	4
Iowa	4
Indiana	4
Illinois	4
Wisconsin	3
Tennessee	3
Mississippi	3
Michigan	3
Kentucky	3
Kansas	3
Arkansas	3
Virginia	2
Pennsylvania	2
North Carolina	2
Maryland	2
Louisiana	2
Alabama	2
Texas	1
South Carolina	1
Oklahoma	1
New York	1
New Jersey	1
Georgia	1
Delaware	1
Eastern Region (Connecticut, Florida, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, West Virginia, District of Columbia, and Puerto Rico)	1
Western Region (Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming	1

* * * * *

Dated: October 17, 2018.

Bruce Summers,

Administrator.

[FR Doc. 2018–23090 Filed 10–22–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0254; Product Identifier 2017–SW–116–AD; Amendment 39–19473; AD 2018–21–15]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2017–13–03 for Bell Helicopter Textron Canada Limited (Bell) Model 429 helicopters. AD 2017–13–03 required adding an identification number to life-limited rod ends that do not have a serial number (S/N). Since we issued AD 2017–13–03, an additional life-limited rod end was identified that is affected by the same unsafe condition. This new AD retains the requirements of AD 2017–13–03 and revises the Applicability paragraph by adding that rod end. The actions of this AD are intended to address an unsafe condition on these products.

DATES: This AD is effective November 27, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 27, 2017 (82 FR 28397, June 22, 2017).

ADDRESSES: For service information identified in this final rule, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/.* You may review this referenced service

information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0254.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* in Docket No. FAA–2018–0254; 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 AD, the Transport Canada AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is Docket Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to remove AD 2017–13–03, Amendment 39–18933 (82 FR 28397, June 22, 2017) (AD 2017–13–03) and add a new AD. AD 2017–13–03 applied to Bell Model 429 helicopters, S/N 57001 through 57260, with a pylon restraint spring assembly (spring assembly) forward rod end assembly (rod end) part number (P/N) 427–010–210–105 installed. AD 2017–13–03 required cleaning and marking each forward rod end with the S/N of the spring assembly. AD 2017–13–03 also prohibited the installation of forward rod end P/N 427–010–210–105 on any helicopter unless it had been marked.

The NPRM published in the **Federal Register** on April 5, 2018 (83 FR 14606). The NPRM was prompted by AD No. CF–2015–15R1, Revision 1, dated July 28, 2017, issued by Transport Canada, which is the Technical Agent for the Member States of Canada, to correct an unsafe condition for Bell Model 429 helicopters, S/Ns 57001 through 57260. Transport Canada advises that, per its regulations, life-limited parts must be marked with their P/N and S/N. Transport Canada further states that spring assembly rod end P/Ns 427–010–210–105 and –109 have a life limit of 5,000 hours; however, they are not serialized, causing difficulties in tracking accumulated air time. According to Transport Canada, this condition could result in a rod end remaining in service beyond its life limit. Therefore, the Transport Canada AD requires adding identification markings on each spring assembly rod end.

Accordingly, the NPRM proposed to continue to retain the requirements of AD 2017–13–03 and revise the Applicability paragraph by adding aft rod end P/N 427–010–210–109 since it is also affected by the same unsafe condition. The proposed requirements were intended to prevent a rod end from remaining in service after reaching its life limit, which could result in failure of the rod end and subsequent loss of control of a helicopter.

Comments

After our NPRM was published, we received a comment from one commenter.

Request

Bell noted a typographical error in the ''Actions Since AD 2017–13–03 Was Issued'' section of the preamble, which incorrectly referred to rod end P/N 427–010–210–105 instead of P/N 427–010–210–109.

We agree with the comment. However, since the text with the error is not restated in the preamble of this Final Rule, no change is necessary.

FAA's Determination

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other helicopters of the same type design and that air safety and the public interest require adopting the AD requirements as proposed.

Related Service Information Under 1 CFR Part 51

We reviewed Bell Helicopter Alert Service Bulletin 429–15–19, dated February 26, 2015, for Model 429 helicopters. This service information specifies procedures for permanently marking each forward and aft rod end with the S/N of the spring assembly. This service information applies to certain serial-numbered helicopters, as subsequent helicopters will have these actions performed during the manufacturing process.

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

Other Related Service Information

We also reviewed Bell Helicopter Maintenance Manual BHT–429–MM–1, Chapter 4, Airworthiness Limitations Schedule, Revision 26, approved September 9, 2016, which specifies airworthiness life limits and inspection intervals for parts installed on Model 429 helicopters.

Costs of Compliance

We estimate that this AD affects 75 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD.

Marking the rod ends takes about 0.5 work-hour for an estimated cost of $43 per helicopter and $3,225 for the U.S. fleet. Replacing a rod end that has exceeded its life limit takes about 3 work-hours and required parts cost about $4,100 for an estimated cost of $4,355 per rod end.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that a regulatory distinction is required, 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 removing Airworthiness Directive (AD) 2017–13–03, Amendment 39–18933 (82 FR 28397, June 22, 2017), and adding the following new AD:

2018–21–15 Bell Helicopter Textron Canada Limited: Amendment 39–19473; Docket No. FAA–2018–0254; Product Identifier 2017–SW–116–AD.

(a) Applicability

This AD applies to Model 429 helicopters, serial number 57001 through 57260, with a pylon restraint spring assembly (spring assembly) forward rod end assembly (rod end) part number (P/N) 427–010–210–105 or aft rod end P/N 427–010–210–109 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a rod end remaining in service after reaching its life limit. This condition could result in failure of a rod end and subsequent loss of control of a helicopter.

(c) Affected ADs

This AD replaces AD 2017–13–03, Amendment 39–18933 (82 FR 28397, June 22, 2017).

(d) Effective Date

This AD becomes effective November 27, 2018.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) Within 140 hours time-in-service, clean and identify each rod end with the spring assembly serial number in accordance with the Accomplishment Instructions, paragraphs 3. through 8., of Bell Helicopter Alert Service Bulletin 429–15–19, dated February 26, 2015.

(2) Do not install a forward rod end P/N 427–010–210–105 or an aft rod end P/N 427–010–210–109 on any helicopter unless it has been marked with a serial number in accordance with paragraph (f)(1) of this AD.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

(1) Bell Helicopter Maintenance Manual BHT–429–MM–1, Chapter 4, Airworthiness Limitations Schedule, Revision 26, approved September 9, 2016, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/*. You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in Transport Canada AD No. CF–2015–15R1, Revision 1, dated July 28, 2017. You may view the Transport Canada AD on the internet at *http://www.regulations.gov* in Docket No. FAA–2018–0254.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 5101, Standard Practices/Structures.

(j) 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.

(3) The following service information was approved for IBR on July 27, 2017.

(i) Bell Helicopter Alert Service Bulletin 429–15–19, dated February 26, 2015.

(ii) Reserved.

(4) For Bell Helicopter service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/*.

(5) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on October 15, 2018.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2018–23037 Filed 10–22–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0513; Product Identifier 2018–CE–013–AD; Amendment 39–19471; AD 2018–21–13]

RIN 2120–AA64

Airworthiness Directives; Honda Aircraft Company LLC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2018–11–05 for certain Honda Aircraft Company LLC (Honda) Model HA–420 airplanes. AD 2018–11–05 required incorporating a temporary revision into the airplane flight manual (AFM) and replacing the faulty power brake valve (PBV) upon condition. We issued AD 2018–11–05 as a short-term action to address the immediate need to detect and replace a faulty PBV. This AD retains the actions required in AD 2018–11–05 and requires replacing the faulty PBV with the improved part. We are issuing this AD to address the long-term corrective action and address the unsafe condition on these products.

DATES: This AD is effective November 27, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 29, 2018 (83 FR 24016, May 24, 2018).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in

this AD as of April 13, 2018 (83 FR 13401, March 29, 2018).

ADDRESSES: For service information identified in this final rule, contact Honda Aircraft Company LLC, 6430 Ballinger Road, Greensboro, North Carolina 27410; telephone (336) 662–0246; internet: *http://www.hondajet.com.* You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0513.

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–2018–0513; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Samuel Kovitch, Aerospace Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5570; fax: (404) 474–5605; email: *samuel.kovitch@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to remove AD 2018–11–05, Amendment 39–19293 (83 FR 24016, May 24, 2018) (''AD 2018–11–05''), and add a new AD to correct an unsafe condition on certain Honda Model HA–420 airplanes. We issued AD 2018–11–05 as a short-term immediate action to detect a faulty PBV. AD 2018–11–05 required inserting a temporary revision into the AFM and replacing the installed PBV, part number (P/N) HJ1–13243–101–005 or P/N HJ1–13243–101–007, with an improved PBV, P/N HJ1–13243–101–009, if any of the procedures listed in the AFM temporary revision revealed a leaking PBV. In addition, AD 2018–11–05 allowed replacing the installed P/N HJ1–13243–101–005 or P/N HJ1–13243–101–007 with the improved P/N HJ1–13243–101–009 as an optional terminating action for the temporary revision procedures in the AFM. AD 2018–11–05 resulted from reports of unannunciated asymmetric braking during ground operations and landing deceleration.

The NPRM published in the **Federal Register** on June 7, 2018 (83 FR 26381). The NPRM was issued as follow-on rulemaking to propose the long-term actions necessary to address the faulty PBV. The NPRM proposed to retain the requirements of AD 2018–11–05 and require replacing the installed PBV, P/N HJ1–13243–101–005 or P/N HJ1–13243–101–007, with the improved PBV, P/N HJ1–13243–101–009, within 12 months. We are issuing this AD to address the long-term corrective action.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We also removed the optional terminating action provision, which allowed operators to replace the PBV at any time to terminate the pre-flight checks in the AFM, because that provision was unnecessary. The requirement to replace the PBV within 12 months of the effective date of this AD provides operators with that same option. We have determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

We reviewed Honda AFM Temporary Revision TR 01.1, dated February 16, 2018 (temporary revision), Honda Service Bulletin SB–420–32–001, dated January 8, 2018 (SB–420–32–001), and Honda Service Bulletin SB–420–32–001, Revision B, dated April 16, 2018 (SB–420–32–001, Revision B). The temporary revision contains procedures for pilot checks of the braking system before every flight during ground operations and before every landing, procedures for landing with a leaking PBV, and procedures for rechecking the PBV for leaking after landing. The temporary revision also includes instructions for corrective actions if any indication of a leaking PBV is found after landing. SB–420–32–001 and SB–420–32–001, Revision B both contain procedures for replacing a faulty PBV with an improved PBV. 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.

Differences Between This Proposed AD and the Service Information

SB–420–32–001 and SB–420–32–001, Revision B specify submitting certain information to the manufacturer. This AD does not require that action.

Costs of Compliance

We estimate that this AD affects 72 airplanes 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
Insert temporary revision into the AFM	1 work-hour × $85 per hour = $85	Not applicable	$85	$6,120
Replace the power brake valve (PBV)	20 work-hours × $85 per hour = $1,700	$21,878	23,578	1,697,616

We provided the cost of replacing the PBV as an on-condition cost based on the procedures in the temporary revision and as an optional terminating action in AD 2018–11–05. We have no way of determining how many owner/operators of the affected airplanes may have already done this replacement. Therefore, we have included a total cost for all affected airplanes.

The difference in the Cost of Compliance between AD 2018–11–05

and this AD is the requirement to replace the power brake valve.

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 small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under 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 removing Airworthiness Directive (AD) 2018–11–05, Amendment 39–19293 (83 FR 24016, May 24, 2018), and adding the following new AD:

2018–21–13 Honda Aircraft Company LLC: Amendment 39–19471; Docket No. FAA–2018–0513; Product Identifier 2018–CE–013–AD.

(a) Effective Date

This AD is effective November 27, 2018.

(b) Affected ADs

This AD replaces AD 2018–11–05, Amendment 39–19293 (83 FR 24016, May 24, 2018) (''AD 2018–11–05'').

(c) Applicability

This AD applies to Honda Aircraft Company LLC (Honda) Model HA–420 airplanes, all serial numbers, that:

(1) Have power brake valve (PBV), part number (P/N) HJ1–13243–101–005 or HJ1–13243–101–007, installed; and

(2) are certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted by reports of unannunciated asymmetric braking during ground operations and landing deceleration. We are issuing this AD to detect failure of the PBV. The unsafe condition, if not addressed, could result in degraded braking performance and reduced directional control during ground operations and landing deceleration.

(f) Compliance

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

(g) Insert Temporary Revision Into the Airplane Flight Manual (AFM)

Before further flight after May 29, 2018 (the effective date retained from AD 2018–11–05) insert Honda Temporary Revision TR 01.1, dated February 16, 2018 (temporary revision), into the Honda HA–420 Airplane Flight Manual (AFM). The procedures listed in the temporary revision are required while operating with PBV P/N HJ1–13243–101–005 or P/N HJ1–13243–101–007 installed. This insertion and the steps therein may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the airplane records showing compliance with this AD in accordance with 14 CFR 43.9 (a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(h) Replace the Power Brake Valve

As of and at any time after May 29, 2018 (the effective date retained from AD 2018–11–05), if any of the procedures listed in the temporary revision referenced in paragraph (g) of this AD reveal a leaking PBV, before further flight, replace the installed PBV, P/N HJ1–13243–101–005 or P/N HJ1–13243–101–007, with the improved PBV, P/N HJ1–13243–101–009. The replacement must be done using the Accomplishment Instructions in either Honda Service Bulletin SB–420–32–001, dated January 8, 2018 (SB–420–32–001), or Honda Service Bulletin SB–420–32–001, Revision B, dated April 16, 2018 (SB–420–32–001, Revision B). Before further flight after installing P/N HJ1–13243–101–009, remove the temporary revision from the Honda HA–420 AFM.

(i) No Reporting Requirement

Although SB–420–32–001 and SB–420–32–001, Revision B specify submitting certain information to the manufacturer, this AD does not require that action.

(j) Mandatory Replacement

Within the next 12 months after November 27, 2018 (the effective date of this AD), if not previously done as a result of paragraph (h) of this AD, replace the installed PBV, P/N HJ1–13243–101–005 or P/N HJ1–13243–101–007, with the improved PBV, P/N HJ1–13243–101–009. The replacement must be done using the Accomplishment Instructions in either SB–420–32–001 or SB–420–32–001, Revision B. Before further flight after installing P/N HJ1–13243–101–009, remove the temporary revision from the Honda HA–420 AFM.

(k) Special Flight Permit

Special flight permits for the AFM Limitations portion of this AD are prohibited. Special flight permits for the PBV replacement required in this AD are permitted with the following limitations: One ferry flight, including fuel stops, to a service center with the temporary revision incorporated into the Honda HA–420 AFM.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta 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 (m) 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.

(3) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (l)(3)(i) and (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. 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.

(m) Related Information

For more information about this AD, contact Samuel Kovitch, Aerospace Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5570; fax: (404) 474–5605; email: *samuel.kovitch@faa.gov.*

(n) 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.

(3) The following service information was approved for IBR on April 13, 2018 (83 FR 13401, March 29, 2018).

(i) Honda Aircraft Company Temporary Revision TR 01.1, dated February 16, 2018.

(ii) Honda Aircraft Company Service Bulletin SB–420–32–001, dated January 8, 2018.

(4) The following service information was approved for IBR on May 29, 2018 (83 FR 24016, May 24, 2018).

(i) Honda Aircraft Company Service Bulletin SB–420–32–001, Revision B, dated April 16, 2018.

(ii) [Reserved]

(5) For Honda Aircraft Company LLC service information identified in this AD, contact Honda Aircraft Company LLC, 6430 Ballinger Road, Greensboro, North Carolina 27410; telephone (336) 662–0246; internet: *http://www.hondajet.com.*

(6) You may view this service information at FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148. In addition, you can access this service information on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0513.

(7) 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 Kansas City, Missouri, on October 10, 2018.

Melvin J. Johnson,

Aircraft Certification Service, Deputy Director, Policy & Innovation Division.

[FR Doc. 2018–22750 Filed 10–22–18; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1234

[Docket No. CPSC–2015–0019]

Revisions to Safety Standard for Infant Bath Tubs

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In accordance with section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), the U.S. Consumer Product Safety Commission (CPSC), in March 2017, published a consumer product safety standard for infant bath tubs. The standard incorporated by reference the applicable ASTM voluntary standard. The CPSIA sets forth a process for updating standards that the Commission has issued under the authority of section 104(b) of the CPSIA. In accordance with that process, we are publishing this direct final rule, revising the CPSC's standard for infant bath tubs to incorporate by reference a more recent version of the applicable ASTM standard.

DATES: The rule is effective on January 15, 2019, unless we receive significant adverse comment by November 23, 2018. If we receive timely significant adverse comments, we will publish notification in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of January 15, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2015–0019, by any of the following methods:

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through *www.regulations.gov.*

Submit written submissions as follows:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions) to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

FOR FURTHER INFORMATION CONTACT: Keysha Walker, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–6820; email: *kwalker@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

A. Authority To Update Rules Issued Under Section 104(b) of the CPSIA

Section 104(b)(1)(B) of the CPSIA, also known as the Danny Keysar Child Product Safety Notification Act, requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. The law requires that these standards are to be ''substantially the same as'' applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product.

Section 104(b) of the CPSIA also sets forth a process for updating CPSC's mandatory durable infant or toddler standards when the voluntary standard upon which such standards are based are modified. Section 104(b)(4)(B) of the CPSIA provides that if an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. By statute, the revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date

specified by the Commission in the **Federal Register**) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.

B. Safety Standard for Infant Bath Tubs

The Commission issued a safety standard for infant bath tubs on March 30, 2017, codified at 16 CFR part 1234. 82 FR 15615. The bath tub standard incorporated by reference the then-current voluntary standard for infant bath tubs, ASTM F2670–17, *Standard Consumer Safety Specification for Infant Bath Tubs.* Paragraph 3.1.2 of ASTM F2670–17 defines an ''infant bath tub'' as a ''tub, enclosure, or other similar product intended to hold water and be placed into an adult bath tub, sink, or on top of other surfaces to provide support or containment, or both, for an infant in a reclining, sitting, or standing position during bathing by a caregiver.'' Paragraph 1.1 of ASTM F2670–17 specifically excludes ''products commonly known as bath slings, typically made of fabric or mesh'' from the scope of the standard. However, the preambles to proposed and final rules for infant bath tubs discuss that ASTM was working to include accessories in the standard.[1] In 2017, CPSC staff recommended proceeding with the final rule intending to update the mandatory rule after updating the voluntary standard to include infant bath tub accessories. *See* March 15, 2017, Briefing Package regarding Staff's Final Rule for Infant Bath Tubs Under the Danny Keysar Child Product Safety Notification Act, at 13–14.[2]

C. Notification of Recent Revision

On July 19, 2018, ASTM officially notified the CPSC that ASTM published a revised 2018 version of ASTM F2670, approved on March 1, 2018. The revised ASTM F2670 includes bath tub accessories and specifies other minor changes, as discussed below in section II of this preamble. By statute, the revised ASTM F2670–18 shall be considered a consumer product safety standard issued by the Commission, effective 180 days after July 19, 2018 (January 15, 2019), unless the Commission specifies a later effective date in the **Federal Register**, or notifies ASTM within 90 days of July 19, 2018 (October 17, 2018) that the Commission has determined that the proposed revision does not improve the safety of infant bath tubs and that the Commission will retain ASTM F2670–17 as the mandatory standard.

D. Updating the Incorporation by Reference

As reviewed in sections II and VI of this preamble, the Commission determines that the proposed revision in ASTM F2670–18 improves the safety of infant bath tubs, and therefore, will allow the revision to become a consumer product safety standard effective January 15, 2019. Accordingly, the Commission is revising the incorporation by reference in 16 CFR 1234.2 to reference ASTM F2670–18.

II. Revisions to ASTM F2670

The 2018 revision to ASTM F2670 expands the scope of the voluntary standard to include accessories used with an infant bath tub, includes new performance tests for accessories used with infant bath tubs, and makes corresponding changes to product labeling and instructions. ASTM F2670–18 also includes several non-substantive changes that do not affect safety, such as spacing, formatting, and language stating that ASTM developed the standard in accordance with principles recognized by the World Trade Organization. None of these changes affects the safety of infant bath tubs. Accordingly, below we summarize the major revisions made in ASTM F2670–18.

A. Introduction and Scope

ASTM F2670–17 specifically excludes infant bath tub accessories from the bath tub standard. The revised ASTM F2670–18 now explicitly states that included within the scope of the standard are ''slings, pads, inserts and similar accessories when such accessories are used with the infant bath tub.'' Adding bath tub accessories to the scope of the standard improves the safety of infant bath tubs because the revision is intended to address product failure incidents involving accessories, which are now included with the sale of some infant bath tubs.

B. Terminology

The revised standard includes six new definitions to address the addition of infant bath tub accessories and other changes recommended by the ASTM subcommittee for consistency across juvenile product safety standards. New terms include ''double action release system,'' ''fabric,'' ''infant bath tub accessory,'' ''product,'' ''protective component,'' and ''seam.'' Paragraph 3.1.5 of ASTM F2670–18 defines ''infant bath tub accessory'' as a ''component or product sold with an infant bath tub or sold separately and that is intended to be attached or placed on or in an infant bath tub for the purpose of supporting an infant during bathing by an adult caregiver.''[3] Revisions in ASTM F2670–18 use this definition to expand the scope of the voluntary standard and apply new testing and labeling requirements to such products to reduce the risk of injury associated with the use of infant bath tub accessories used with an infant bath tub.

C. General Requirements

ASTM F2670–18 contains revised general requirements that now include infant bath tub accessories, such as the general requirement for *Resistance to Collapse.* Paragraph 5.4.1 requires that infant bath tub accessories must contain latching and locking mechanisms to prevent the unintentional collapse of the product with the infant in the product, using either a single or double action release system as described in paragraphs 5.4.1.1 and 5.4.1.2, and that meet the new testing requirements in section 7 of the standard. The majority of incidents noted in the proposed and final rules for infant bath tubs involved bath tub accessories that collapsed during use. Accordingly, revising general requirements to address this risk of injury improves the safety of infant bath tubs when used with infant bath tub accessories.

Changes in paragraphs 5.7 and 5.8 of ASTM F2670–18 improve the safety of infant bath tub accessories by extending

[1] *See* Proposed Rule for Infant Bath Tubs: 80 FR 48769, 48770, 84772 (August 14, 2015) (noting that infant slings are excluded from the voluntary standard and that CPSC staff was working with two ASTM task groups created to address injuries associated with the use of infant bath slings); Final Rule for Infant Bath Tubs: 82 FR 15615, 15619 (March 30, 2017). Section IV.F of the final rule describes that the Commission is moving forward with a final rule while CPSC staff continues to work with two ASTM task groups to address the risk of injury associated with the use of infant bath slings. The final rule states that if the ASTM standard is revised to address infant bath slings, Commission staff will evaluate the revised standard and advise the Commission whether to update the mandatory standard to incorporate by reference any revised standard at that time.

[2] Available at: *https://www.cpsc.gov/s3fs-public/Final%20Rule%20-%20Safety%20Standard%20for%20Infant%20Bath%20Tubs%20-%20March%2015%202017.pdf.*

[3] Paragraph 3.1.5.1 further explains that an infant bath tub accessory may also be used as a standalone product, but that mode is not covered by ASTM F2670–18. ASTM is currently working on a new voluntary standard to cover standalone infant bathers. Moreover, other bath tub accessories that are not intended to support an infant while bathing, such as soap, towel holder, water pump, or a shower handle, are also not included within the definition of ''infant bath tub accessory.''

the existing requirements for protective components and toys to include infant bath tub accessories. Paragraph 5.10 of the revised standard, *Compliance with Multi-use Products,* is a new provision aimed at addressing infant bath tub accessories that can be used alone or with an infant bath tub. ASTM F2670–18 only applies to infant bath tub accessories when used with an infant bath tub. Paragraph 5.10 states that if an infant bath tub accessory can be used as a standalone product that is subject to a different standard, the product must be tested and comply with the requirements of that standard as well. Paragraph 5.10 ensures that infant bath tub accessories are tested to every applicable standard. This revision improves safety by ensuring that existing requirements apply to infant bath tub accessories, and by ensuring that all use modes of infant bath tub accessories are required to be in compliance with applicable standards.

D. Performance Requirements

Paragraph 6.4 of ASTM F2670–18 includes new performance testing for infant bath tub accessories, *Structural Integrity/Attachment of Infant Bath Tub Accessories.* The new requirements include: Static and dynamic load testing to ensure that accessories stay attached to the bath tub during use; integrity and strength testing for fabric and mesh accessories to ensure no material breakage, disengagement, detachment, or change in the ability to support an infant; and seam strength testing of fabric and mesh accessories to ensure a breakage strength of 30 lbf or greater. The addition of performance requirements for infant bath tub accessories improves safety because the requirements are intended to address the incident data reports involving infant bath tub accessories, as described in the proposed and final rules for infant bath tubs, that previously were not covered by the voluntary or mandatory standard.

E. Test Methods

Paragraph 7 of ASTM F2670–18 contains the test methods to determine whether the product complies with the performance requirements in paragraph 6, including the new testing requirements for bath tub accessories. Revisions to paragraph 7.1, *Latching and Locking Mechanism(s),* add 730 cycles of testing on latching and locking mechanisms for an infant bath tub accessory while maintaining 2000 cycles of testing on the bath tub. The number of cycles for testing accessories is lower than bath tubs, with the assumption that consumers will use the accessory for a shorter length of time (while the infant cannot sit up unassisted) than the bath tub. The addition of paragraphs 7.6 *Structural Integrity—Infant Bath Tub Accessory* and 7.7 *Mesh/Fabric Attachment Strength Test Method,* provide new testing requirements that correspond to the performance requirements in paragraph 6. For example, the test method for the dynamic load test acknowledges that infants are not stationary and move around on the accessories. The new test methods for infant bath tub accessories in paragraph 7 of ASTM F2670–18 adequately determine compliance with the performance requirements in paragraph 6 of the standard, and therefore improve safety.

F. Marking and Labeling

Revisions to the marking and labeling section in paragraph 8 of the 2018 revised standard include requiring the same drowning and fall hazard warnings on infant bath tub accessories as are on the bath tub, except ''infant bath tub accessories'' replaces ''infant bath tub.'' ASTM F2670–18 provides that manufacturers can use one set of labels, solely on the bath tub, if the warnings on the bath tub are visible while the accessory is in place, and the accessory can only be used while on the bath tub. This requirement prevents over-labeling, which can lead to warning saturation and consumers disregarding warnings. To allow the single label on the bath tub to include the accessories, the hazard statements in paragraphs 8.5.1.1 and 8.5.2.1 were changed from ''exactly as stated'' to ''shall address.'' Use of the phrase ''shall address'' allows manufacturers to combine the infant bath tub and infant bath tub accessory hazard statements to be merged to read: ''Drowning Hazard: Babies have drowned while using infant bath tubs and infant bath tub accessories.'' When infant bath tub accessories are sold separately, ASTM F2670–18 requires that the drowning and fall hazard warnings appear on the retail packaging, unless such warnings on the product are not concealed by the packaging.

G. Instructional Literature

The requirements for instructional literature in paragraph 9 of ASTM F2670–18 have been broadened to include infant bath tub accessories, similar to the marking and labeling section of the revised standard (paragraph 8).

III. Incorporation by Reference

The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to the final rule, ways that the materials the agency incorporates by reference are reasonably available to interested persons, and how interested parties can obtain the materials. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, section II of this preamble summarizes the substantive revisions in ASTM F2670–18 that the Commission incorporates by reference into 16 CFR part 1234. The standard is reasonably available to interested parties, and interested parties may purchase a copy of the standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959 USA; phone: 610–832–9585; *http://www.astm.org/.* A copy of the standard can also be inspected at CPSC's Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923.

IV. Certification

Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program, or, for children's products, on tests of a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. Standards for durable infant or toddler products that are issued under section 104(b)(1)(B) of the CPSIA are ''consumer product safety standards.'' Thus, the revised standard for infant bath tubs is subject to the testing and certification requirements of section 14 of the CPSA.

Because infant bath tubs are children's products, samples of these products must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. These products also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA, the phthalates prohibitions in section 108 of the CPSIA, the tracking

label requirement in section 14(a)(5) of the CPSA, and the consumer registration form requirements in section 104(b) of the CPSIA.

V. Notice of Requirements

In accordance with section 14(a)(3)(B)(iv) of the CPSA, the Commission has previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing infant bath tubs (78 FR 15836 (March 12, 2013) (final rule for 16 CFR part 1112); 82 FR 15626 (final rule for infant bath tubs updating part 1112)). The NOR provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing infant bath tubs to 16 CFR part 1234 (which incorporated ASTM F2670–17). The NOR is listed in the Commission's rule, ''Requirements Pertaining to Third Party Conformity Assessment Bodies.'' 16 CFR part 1112.

Staff's analysis of the new testing requirements in ASTM F2670–18 for infant bath tub accessories concludes that such testing does not require use of new or specialized equipment that is different than testing equipment for ASTM F2670–17. Staff states that testing accessories pursuant to ASTM F2670–18 requires use of existing testing equipment and similar testing protocols that are used to test infant bath tubs, with minor adjustments. For example, the new dynamic test for accessories uses the same testing equipment as the static load test already in the standard. Moreover, staff states that the revised standard provides clear instructions and figures to describe the load placement for accessory testing. Testing laboratories that have previously demonstrated competence for testing in accordance with ASTM F2670–17 will have the competence to test in accordance with the revised standard. Therefore, the Commission will consider the existing accreditations that CPSC has accepted for testing to ASTM F2670–17 to also cover testing to F2670–18. In this case, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of the testing laboratories' accreditation to reflect the revised standard in the normal course of renewing their accreditation. CPSC staff will notify all CPSC-accepted labs by direct email and will provide links to the **Federal Register** notice to explain the changes to the standard and the effective date.

VI. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA) generally requires notice and comment rulemaking, section 553 of the APA provides an exception when the agency, for good cause, finds that notice and public procedure are ''impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). The Commission concludes that when the Commission updates a reference to an ASTM standard that the Commission has incorporated by reference under section 104(b) of the CPSIA, notice and comment are not necessary.

The process set forth in section 104(b)(4)(B) of the CPSIA specifies that when ASTM revises a standard previously incorporated by reference by the Commission as a durable infant or toddler product under section 104(b)(1)(b) of the CPSIA, the revision will become the new CPSC standard, unless the Commission determines that ASTM's revision does not improve the safety of the product. Thus, unless the Commission makes such a determination, the ASTM revision becomes CPSC's standard by operation of law. The Commission is allowing ASTM F2670–18 to become CPSC's new standard. The purpose of this direct final rule is merely to update the reference in the Code of Federal Regulations (CFR), so that the CFR accurately reflects the version of the standard that takes effect by statute. Public comment will not impact the substantive changes to the standard or the effect of the revised standard as a consumer product safety standard under section 104(b) of the CPSIA. Under these circumstances, notice and comment are not necessary.

The Commission also highlights that in Recommendation 95–4, the Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgating rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* 60 FR 43108 (August 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the ''unnecessary'' prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule because we do not expect any significant adverse comments.

Unless the Commission receives a significant adverse comment within 30 days, the rule becomes effective on January 15, 2019. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be one where the commenter explains why the rule would be inappropriate, including an assertion challenging the rule's underlying premise or approach, or a claim that the rule would be ineffective or unacceptable without change.

Should the Commission receive a significant adverse comment, the Commission will withdraw this direct final rule. Depending on the comments and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that agencies review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603 and 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As explained above, the Commission has determined that notice and comment are not necessary for this direct final rule. Thus, the RFA does not apply. We also note the limited nature of this document, which updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

VIII. Paperwork Reduction Act

The infant bath tub standard contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The current revision to incorporate by reference a new version of ASTM F2670 makes no changes to the information collection previously established for infant bath tubs. Thus, the revision will not have any effect on the information collection requirements related to the standard.

IX. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement because they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This direct final rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

X. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a ''consumer product safety standard under [the Consumer Product Safety Act (CPSA)]'' is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury, unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.

Section 104(b)(1)(B) of the CPSIA refers to the rules to be issued under that section as ''consumer product safety standards,'' thus, implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

XI. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standard organization revises a standard upon which a consumer product safety standard issued under section 104(b) of the CPSIA was based, the revision becomes the CPSC standard within 180 days of notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the **Federal Register**. The Commission has not set a different effective date. Thus, in accordance with this provision, this rule takes effect 180 days after we received notification from ASTM of revisions to these standards. As discussed in the preceding section, this is a direct final rule. Unless we receive a significant adverse comment within 30 days, the rule will become effective on January 15, 2019.

List of Subjects in 16 CFR Part 1234

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, bath tub, and Toys.

For the reasons stated above, the Commission amends Title 16 CFR chapter II as follows:

PART 1234—SAFETY STANDARD FOR INFANT BATH TUBS

■ 1. The authority citation for part 1234 continues to read as follows:

Authority: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, § 104, 122 Stat. 3016 (August 14, 2008); Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

■ 2. Revise § 1234.2 to read as follows:

§ 1234.2 Requirements for infant bath tubs.

Each infant bath tub must comply with all applicable provisions of ASTM F2670–18, Standard Consumer Safety Specification for Infant Bath Tubs, approved on March 1, 2018. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *http://www.astm.org/.* You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or 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.*

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2018–23071 Filed 10–22–18; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0940]

Drawbridge Operation Regulation; Steamboat Slough (Snohomish River), Marysville, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Burlington Northern Santa Fe Railway Company (BNSF) Railroad Bridge (BNSF Bridge 37.0) across Steamboat Slough (Snohomish River), mile 1.0 near Marysville, WA. The deviation is necessary to accommodate scheduled replacement of bridge ties across the swing span replacement. The deviation allows the bridge to remain in the closed-to-navigation position during the maintenance to allow safe movement of work crews.

DATES: This deviation is effective from 11 a.m. on November 26, 2018 to 3 p.m. on December 14, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0940 is available at *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 deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Steven M. Fischer, the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282 email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: BNSF has requested a temporary deviation from the operating schedule for the BNSF Bridge 37.0, mile 1.0, crossing Steamboat Slough (Snohomish River), near Marysville, WA. BNSF requested for BNSF Bridge 37.0 be allowed to remain in the closed-to-navigation position for swing span maintenance. This maintenance will improve the reliability of the bridge for marine openings. The normal operating schedule for the subject bridge is in 33 CFR 117.1059. BNSF Bridge 37.0 is a swing bridge and provides 8 feet of vertical clearance above mean high water elevation while in the closed-to-navigation position.

This deviation allows the BNSF Bridge 37.0 to remain in the closed-to-navigation position, and need not open for maritime traffic from 11 a.m. on November 26, 2018 to 3 p.m. on December 14, 2018 per the table below:

From time/date	To time/date	Span position
11 a.m./Nov 26, 2018	3 p.m./Nov 30, 2018	Closed.
11 a.m./Dec 3, 2018	3 p.m./Dec 7, 2018	Closed.
11 a.m./Dec 10, 2018	3 p.m./Dec 14, 2018	Closed.

The bridge shall operate in accordance to 33 CFR 117.1059 at all other times. Vessels able to pass through the subject bridge in the closed-to-navigation position may do so at any time. The bridge will be required to open, if needed, for vessels engaged in emergency response operations during this closure period.

Waterway usage on this part of the Snohomish River and Steamboat Slough includes tug and barge to small pleasure craft. The BNSF Bridge 37.0 receives an average number of three opening request during this time of year. BNSF has coordinated with Steamboat Slough users that frequently request bridge openings during this time of year. No immediate alternate route for vessels to pass is available on this part of the river. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridges must return to their regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 16, 2018.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2018–23028 Filed 10–22–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0906]

Drawbridge Operation Regulation; Bonfouca Bayou, Slidell, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the State Route 433 Bridge across Bonfouca Bayou, mile 7.0, at Slidell, St. Tammany Parish, Louisiana. This deviation is necessary to perform maintenance. This deviation allows the bridge to remain in the closed-to-navigation position during nighttime hours for approximately 42 days.

DATES: This deviation is effective from 6 p.m. on October 27, 2018, through 6 a.m. on December 7, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0906 is available at *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 deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Ms. Giselle T. MacDonald, Bridge Administration Branch, Coast Guard, telephone (504) 671–2128, email *Giselle.T.MacDonald@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development (LADOTD) requested a temporary deviation from the operating schedule of the State Route 433 Bridge across Bonfouca Bayou, mile 7.0, at Slidell, St. Tammany Parish, Louisiana. This deviation is necessary to accommodate the removal and replacement of the open grid steel deck on the movable section of the swing bridge, which will take place seven days a week during nighttime hours. The vertical clearance of the bridge is 8 feet above mean high water (MHW) in the closed-to-navigation position and unlimited in the open-to-navigation position. There is 125 feet of fender to fender horizontal clearance. The bridge currently operates under 33 CFR 117.433.

This deviation is effective from 6 p.m. on Saturday, October 27, 2018, through 6 a.m. on Friday, December 7, 2018. During the deviation period, the bridge will be closed-to-navigation from 6 p.m. to 6 a.m., Monday through Friday, and from 6 p.m. to 9 a.m. on Saturday and Sunday, including holidays. At all other times, the bridge will operate in accordance with 33 CFR 117.433.

During the nighttime repair periods when the bridge is in the closed-to-navigation position, vessels will not be allowed to pass through the bridge and the bridge will not be able to open for emergencies. Navigation on the waterway consists mainly of recreational craft, with some tugs with tows. There is no alternative route. The Coast Guard will inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35, the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 16, 2018.

Douglas A. Blakemore,

Bridge Administrator, U.S. Coast Guard Eighth District.

[FR Doc. 2018–23029 Filed 10–22–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0950]

Drawbridge Operation Regulation; Hood Canal, Port Gamble, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Washington State pontoon highway bridge (Hood Canal Bridge) across Hood Canal, mile 5.0, near Port Gamble, WA. The deviation is necessary to accommodate replacement newly discovered draw span operating equipment while installing upgrades. This deviation allows the bridge to open the half the draw, 300 feet, after receiving at least a four hour notice.

DATES: This deviation is effective without actual notice from October 23, 2018 to 11:59 p.m. on November 16, 2019. For purposes of enforcement, actual notice will be used from 6 p.m. on October 13, 2018, to October 23, 2018.

ADDRESSES: The docket for this deviation, USCG–2018- 0950 is available at *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 deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Washington Department of Transportation (WSDOT), the bridge owner, has requested a temporary deviation from the operating schedule of the Hood Canal Bridge. This deviation will allow the subject bridge to open

half of the draw span, east half only, to facilitate replacement of worn equipment discovered after installation of upgrades. The Hood Canal Bridge crosses Hood Canal, mile 5.0, near Port Gamble, WA. The bridge has two fixed spans (east and west), and one draw span (center). The east span provides 50 feet of vertical clearance, the west span provides 35 feet of vertical clearance, and the center span provides zero feet of vertical clearance in the closed-to-navigation position. The center span provides unlimited vertical clearance in the open-to-navigation position. Vertical clearances are referenced to mean high-water elevation.

This deviation allows the center span of the Hood Canal Bridge to open half-way (300 feet vice 600 feet) on signal after receiving at least a four hour notice from 6 a.m. on October 13, 2018 to 11:59 p.m. on November 16, 2019. During the period of this deviation, the drawbridge will not be able to operate according to the normal operating schedule. The normal operating schedule for the Hood Canal Bridge is in accordance with 33 CFR 117.1045. The bridge shall operate in accordance to 33 CFR 117.1045 at all other times. Waterway usage on this part of Hood Canal (Admiralty Inlet) includes commercial tugs and barges, U.S. Navy and U.S. Coast Guard vessels, and small pleasure craft. Coordination has been completed with known waterway users, and a no objections to the deviation have been received.

Vessels able to pass through the east and west spans may do so at any time. The center span does not provide passage in the closed-to-navigation position. The subject bridge will be able to open half the center span for Navy and Coast Guard vessels during emergencies, when at least a one hour notice has been given by the Navy or Coast Guard. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by this temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 17, 2018.

Steven Fischer,

Chief, Bridge Program, Thirteenth Coast Guard District.

[FR Doc. 2018–23073 Filed 10–22–18; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[WC Docket No. 17–192, CC Docket No. 95–155; FCC 18–137]

Toll Free Assignment Modernization; Toll Free Service Access Codes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) revises its rules to allow the Commission to assign numbers by competitive bidding, on a first-come, first-served basis, by an alternative assignment methodology, or by a combination of methodologies. The Commission further establishes a single round, sealed-bid Vickrey auction for roughly 17,000 mutually exclusive numbers in the 833 code, set aside in the process of opening that code. Government and non-profit entities may file a petition seeking that a number be set aside from the auction for use for public health and safety purposes, and net proceeds from the auction will offset the costs of toll free numbering administration. Full auction procedures will be established in subsequent public notices. The Commission also revises its toll free rules to allow for the development of a secondary market for toll free numbers assigned in an auction, and to modernize its toll free rules to make them consistent with the other revisions adopted in this document and with industry terminology and practice.

DATES: Effective November 23, 2018.

FOR FURTHER INFORMATION CONTACT: Wireline Competition Bureau, Competition Policy Division, Matthew Collins, at (202) 418–7141, *matthew.collins@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in WC Docket No. 17–192, CC Docket No. 95–155, FCC 18–137, adopted September 26, 2018, and released September 27, 2018. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. It is available on the Commission's website at *https://docs.fcc.gov/public/attachments/FCC-18-137A1.pdf.*

Synopsis

I. Introduction

1. Today, we demonstrate our continued commitment to modernize the way we assign toll free numbers by adopting an additional assignment methodology that is both market-based and equitable. Based on the Federal Communications Commission's success using competitive bidding to assign spectrum licenses and award universal service support, we adopt new measures to explore the use of competitive bidding for the assignment of toll free numbers. To further evaluate this approach, as an experiment we establish the framework in this Report and Order for an auction of the rights to use certain numbers in the recently-opened 833 toll free code. After the release of this Report and Order, we will initiate the pre-auction phase of this proceeding to seek input on the procedures for the auction. This experiment will help us determine how best to use competitive bidding to most effectively assign toll free numbers, as well as provide experience in applying auction procedures to the toll-free numbering assignment process.

II. Background

2. Toll free calling and texting remains an important part of our communications system. Even as websites and smartphone apps have provided new avenues for public engagement, businesses, government entities, and non-profit organizations alike continue to make use of toll free services to keep an open line to the public, and enterprising subscribers put toll free numbers to use in creative new ways. Toll free services rely on toll free numbers—a limited resource the Commission is charged by statute with making available ''on an equitable basis.''

3. Toll free calling began in 1967, with the introduction of the 800 toll free code. The 800 code was established by AT&T, and the Commission's role in the toll free service market increased over the following 30 years. In 1997, faced with the possibility of exhaust of the 800 code, the Commission concluded that the Communications Act of 1934, as amended, ''require[s] the Commission to ensure the efficient, fair, and orderly allocation of toll free numbers.'' Thirty years later, when the Commission opened the second toll free code—888—it addressed an age-old question for the first time in the context of toll free numbers: How can limited resources be most fairly and efficiently allocated when some of those resources are more desirable than others? Whether they

were desirable because they were easy to remember, because they could spell a name or common word, or because a subscriber had built up good will in that number in the 800 code, some 888 numbers were likely to be highly desirable while others might draw no interest at all.

4. Congress has given the Commission only one guideline regarding the allocation of toll-free numbers: Do so ''on an equitable basis.'' Interpreting this guideline after opening the 888 code, the Commission understood ''equitable'' to include two prongs: ''orderly and efficient'' and ''fair.'' After considering multiple methodologies to assign toll free numbers, the Commission settled on a first-come, first-served approach. The Commission also offered a limited right of first refusal to subscribers of 800 numbers that expressed an interest in subscribing to that number in the 888 code. Inspired by its low cost and simplicity, the Commission found such an approach to be ''orderly and efficient''; it also concluded that it was ''fair'' because it did not discriminate on its face against any potential subscribers.

5. Among the alternate methodologies the Commission considered when it opened the 888 code was competitive bidding. The Commission observed the fairness of this approach, stating that it ''would offer all participants an equal opportunity to obtain a particular . . . number''; it also described auctions as ''generally efficient.'' Although the Commission had conducted spectrum auctions prior to the 888 code opening, the Commission concluded that an auction of toll free numbers presented ''practical difficulties''—not only could it cost more than a first-come, first-served approach, but it could also require oversight to ensure that bidders met requirements and followed auction procedures.

6. When the Commission decided how to assign certain 888 toll free numbers, the Commission's auctions program was still in its relatively early stages. The Commission's first spectrum auction was held in July 1994. The Notice of Proposed Rulemaking for the 888 toll free code was adopted in October 1995, and the *1998 Toll Free Order* was adopted in March 1998. In the 20 years since that decision, the Commission has conducted over 70 spectrum auctions, including those for commercial wireless licenses and broadcast construction permits, using various auction formats. More recently, the Commission has begun using auctions as a mechanism for distributing universal service high-cost support.

7. During this same period, the first-come, first-served approach to toll free number assignment—which was used with some modification for the 877, 866, 855, and 844 code openings—has been subject to scrutiny by the Wireline Competition Bureau (Bureau) for falling short of expectations in several ways. For example, first-come, first-served assignment has rewarded actors that have invested in systems to increase the chances that their choices are received first in the Service Management System Database (the Toll Free Database, the ''database system for toll free numbers,'' in which entities reserve numbers and ''enter and amend the data about toll free numbers within their control''); and, by assigning numbers at no cost, it has allowed accumulation of numbers without ensuring those numbers are being put to their most efficient use. The Bureau addressed this latter issue, and the issue of some registrants having enhanced connectivity to the toll free database, by limiting registrants to 100 numbers per day for a month after the opening of the last two codes, 844 and 855.

8. *833 Code Opening.* In April 2017, the Bureau authorized Somos, Inc. (Somos), the Toll Free Numbering Administrator, to open the 833 toll free code. To facilitate the exploration of alternative assignment methodologies, the Bureau took steps in the pre-code opening process to identify numbers that could be part of an experiment regarding the use of an alternative assignment process, such as an auction. Specifically, the Bureau authorized Responsible Organizations (RespOrgs, which are ''entit[ies] chosen by a toll free subscriber to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber'') to identify up to 2,000 desired numbers in the 833 code and submit a request for those numbers to Somos. The Bureau directed Somos to review these requests, identify numbers subject to multiple requests, and place these ''mutually exclusive'' numbers in unavailable status (which means ''[t]he toll free number is not available for assignment due to an unusual condition'') pending the outcome of this proceeding. Numbers that were not requested by multiple RespOrgs were made available on a first-come, first-served basis.

9. Nearly 150 RespOrgs participated in the 833 pre-code opening process, requesting over 72,000 numbers. Somos identified over 17,000 mutually exclusive numbers—including '' 'repeaters' (833–333–3333, 833–888–8888, 833–800–0000, etc.) and numbers that spell memorable words or phrases (833–DENTIST, 833–DOCTORS, 833–FLOWERS . . . etc.)''—and placed those numbers in unavailable status. Ten or more RespOrgs requested over 1,800 mutually exclusive numbers, and 65 or more RespOrgs requested the ten most popular numbers.

10. *Notice of Proposed Rulemaking.* In September 2017, the Commission released the *Toll Free Assignment NPRM,* which proposed and sought comment on steps to better promote the equitable and efficient assignment and use of toll free numbers. Specifically, the Commission proposed expanding the existing toll free number assignment rule to include assignment by auction or other equitable assignment methodologies, and assigning the over 17,000 mutually exclusive numbers in the 833 toll free code through competitive bidding. (The Commission also proposed and sought comment on various specific auction rules and mechanisms.) The Commission also sought comment on eliminating the brokering (under our rules, the selling of numbers by a subscriber for a fee), warehousing (the reservation of numbers by a RespOrg without an actual subscriber for whom the numbers are being reserved), and hoarding (the acquisition of more numbers by a subscriber than it intends to use) prohibitions; setting aside numbers for use for public interest purposes; options to address abuse of toll free numbers; and changes to overall toll free numbering administration. The Commission received comments from various stakeholders including RespOrgs, service providers, and companies that have built their businesses around toll free calling.

III. Discussion

11. Given the passage of time since adopting the first-come, first-served methodology, and experience gained in opening five toll free codes, we modify our toll free number assignment rule to give the Commission flexibility to implement alternative approaches to assigning numbers. As an experiment in using such an alternative approach, we establish an auction to assign the over 17,000 identified mutually exclusive numbers in the 833 code (the 833 Auction). We also designate Somos as the auctioneer. While this Report and Order provides Somos with the general framework for the 833 Auction, we also provide for a pre-auction process to establish detailed auction procedures after additional notice and comment, as is typical in all Commission auctions. We require Somos to implement the established procedures to conduct the auction and, after the bidding has

ended, to provide the Commission with all data and information gained from the auction. Moreover, consistent with our goal of assigning numbers via a market mechanism, we create an exception to our brokering, warehousing, and hoarding prohibitions for numbers acquired through competitive bidding.

A. The Toll Free Assignment Rule

1. Adopting a Revised Toll Free Assignment Rule

12. We adopt the toll free assignment revision of section 52.111 of our rules that the Commission proposed in the *Toll Free Assignment NPRM.* (We adopt the proposed rule revision with two minor changes. First, we make our rule consistent with the rules governing spectrum and universal service support competitive bidding, by using the phrase ''competitive bidding'' rather than ''auction.'' Second, we improve the clarity of our rule by removing proposed language providing that the Commission will assign numbers through an assignment methodology ''as circumstances require.'' We further make administrative revisions to our toll free rules, consistent with the recommendations of the North American Numbering Council (NANC) Toll Free Assignment Modernization Working Group Report.) Our revised rule allows the Commission to direct the assignment of toll free telephone numbers to RespOrgs and subscribers on an equitable basis by competitive bidding, on a first-come, first-served basis, by using an alternative assignment methodology, or by a combination of these approaches. We find that our experience assigning toll free numbers since the original rule's adoption 20 years ago—in which time certain entities have undertaken efforts to increase their chances that desirable numbers are assigned to them through the first-come, first-served system—supports the revised rule's flexible approach to number assignment and is supported by the record.

13. With our revised rule, we increase our options to assign toll free numbers in a way that accounts for valuable social use. The revised rule provides us greater flexibility to explore alternative assignment mechanisms in addition to the current first-come, first-served methodology. By revising our rule to permit—but not obligate—the Commission to assign toll free numbers by auction, we add a valuable tool to our tool chest while maintaining the flexibility to craft assignment mechanisms suited to the nature of different inventories of numbers. One commenter argues that, in so doing we are ''upending'' the toll free market to address demand for a ''statistically insignificant'' amount of toll free numbers. But the demand for those specific numbers is not insignificant and, in fact, demonstrates the need to reconcile the demand with the assignment mechanism. Our rule does not mandate the use of a new assignment mechanism, instead allowing for targeted modifications to the assignment process going forward as circumstances require.

2. Considerations of Assignment Methodologies

14. We find that revising our rules to allow alternative means of toll free number assignment is consistent with our statutory obligation to distribute numbers on an equitable basis. Section 251(e)(1) of the Communications Act of 1934, as amended (the Act), directs the Commission to make numbers available on an equitable basis. We find that the revised rule adopted today facilitates assignment of numbers equitably, per the standards of our precedent. The flexibility of our rule, including the option to use competitive bidding to assign toll free numbers, increases the likelihood that, as limited resources, toll free numbers will be assigned to parties that value the numbers most.

15. In considering whether number distribution means are equitable under section 251(e)(1), we consider the principles of order, efficiency, and fairness. In so doing, the Commission has allowed exceptions to the assignment of numbers by the first-come, first-served approach, with the intent to serve the broader public interest of *equitably* distributing the finite resource of toll free numbers. (For example, the Wireline Competition Bureau allowed a right of first refusal in 1997 for 800 number subscribers seeking corresponding 888 code numbers. The Bureau has also rationed the release of disconnected 800 code numbers, and the release of 844 and 855 numbers upon opening of those codes. Aside from modifications of first-come, first-served, assignment, the Bureau has also assigned numbers upon request for reasons of national defense and public safety.) When it established the first-come, first-served assignment method in the *1998 Toll Free Order,* the Commission opined that pursuant to section 251(e)(1), the Commission must apply a two-part test to determine if any given assignment methods were ''1) orderly and efficient, and 2) fair.'' When it first applied this test over twenty years ago, based on certain limitations and unknown factors with respect to number auctions, the Commission found that ''the use of a first-come, first-served assignment method is a more equitable method of allocating these numbers.'' With the benefit of some twenty years' of additional experience in toll free number allocation, in addition to extensive use of the auction mechanism in various contexts, we now reassess this conclusion.

16. *Section 251(e)(1) Test for Assigning Toll Free Numbers.* We reapply the 251(e)(1) two-part test and conclude that the use of competitive bidding, like the other assignment methodologies in revised rule section 52.111, will result in an orderly, efficient, and fair assignment of toll free resources. The Commission has explained that an *orderly* toll free number assignment mechanism ''will simplify the administrative requirements necessary to assign toll free numbers and avoid the need to resolve competing claims among subscribers to particular numbers.'' Additionally, an *efficient* toll free number assignment mechanism will minimize exhaust of the toll free numbering resource.

17. After reevaluating the criteria in the *1998 Toll Free Order,* we conclude that assigning toll free numbers through the use of competitive bidding is orderly; any entity interested in a toll free number can, through an auction, express the value it places on a particular number, in a clear, transparent, and relatively simple manner. Moreover, assigning a number to the entity that places the highest bid is easy to understand and avoids the need to resolve competing claims among potential subscribers to particular numbers. Further, the first-come, first-served approach has not always resulted in an orderly and efficient distribution of highly-valued—*i.e.,* mutually exclusive—numbers. Since the Commission's adoption of this approach in the *1998 Toll Free Order,* the Bureau has intervened to withhold or ration highly desired numbers in subsequent code openings due to concerns with the first-come, first-served assignment process. The Bureau, expressing concern that RespOrgs were inefficiently warehousing numbers, implemented conservation plans for four out of the seven presently available toll free number codes.

18. Given the Commission's considerable experience with auctions since 1998 and the ability of an entity to bid the value it places on a particular number in a clear, transparent, and relatively simple manner, we believe any administrative costs and ''practical difficulties'' in holding an auction would be significantly lower than

previously believed, making it more likely that the efficiencies of competitive bidding will outweigh such costs. Therefore, we conclude that adding competitive bidding as one possible assignment method meets the first prong of our established test, namely, that an assignment mechanism be orderly and efficient.

19. We also find that the market-based assignment methodologies in revised rule 52.111 are fair, meeting the second part of the section 251(e)(1) test. The Commission has explained that a *fair* toll free number assignment mechanism is one that gives ''[a]ll subscribers . . . an equal opportunity to reserve desirable toll free numbers as new codes are opened.'' Using a competitive bidding process to assign mutually exclusive toll free numbers can provide interested parties with a level playing field, on which everyone has the same ability to express their valuation for specific numbers in a clear, transparent manner, using an equally accessible method. Based on our experience with auctions in other contexts, we find that we are more likely to achieve our stated objective of assigning mutually exclusive toll-free numbers on an equitable basis by allowing all qualified bidders the same opportunity to express their value for a number and assigning the numbers to the party that values it the most, than if we use a method by which a number is assigned to the party that employs the most advanced access system. (We expect that the experimental use of an auction for mutually exclusive 833 toll free numbers (as adopted in this item) will yield additional insight into whether auctions are the best methodology for assigning toll free numbers and, if so, how best to use competitive bidding in the future.) Moreover, the current method leads to unnecessary expenditure on equipment to gain a timing advantage, whereas the proceeds from a toll free number auction will go towards the administration of the toll free system.

20. While in its 1998 application of this test, the Commission stated that auctions ''offer all participants an equal opportunity to obtain a particular . . . number,'' it also concluded that a first-come, first-served assignment mechanism was also fair and selected that approach due to its then perceived benefits of order and efficiency. We find that the Commission's prior conclusion has not borne out for highly desired toll free numbers; indeed, the Bureau has intervened in the last four toll free code openings, altering the first-come, first-served methodology *precisely* to ensure fairness in the toll free number assignment methodology.

21. Since the *1998 Toll Free Order* was adopted, the Commission has observed that the underlying numbering access technology has evolved: Certain automated systems now used to access the Toll Free Database have placed smaller RespOrgs at a competitive disadvantage because they do not have the capacity to quickly reserve sought-after vanity numbers. Enhanced connectivity gives larger, more sophisticated entities the incentive to invest in these systems to increase the chances that their number requests are processed. This situation undermines a key rationale for the first-come, first-served approach: That all interested parties have an equal chance of getting a number. And while it advances the separate goal of ensuring a number is quickly allocated to the party that values it most highly—a differential willingness to invest indicates an underlying differential in the value the investing party sees in numbers—it does so only loosely, since there is no direct mechanism that allows potential subscribers to bid in their valuation. In the absence of conservation controls, the Bureau has seen evidence of unfair access following new toll free code openings. For example, following the 877 and 866 code openings, the Commission received reports from RespOrgs suggesting that during database ''timeouts,'' only RespOrgs with more advanced access systems were able to reserve numbers, while RespOrgs not using those advanced systems were ''locked out'' and unable to reserve their desired numbers. For the 855 and 844 toll free code openings, the Bureau directed the toll free database administrator to limit the quantity of toll free numbers a RespOrg may reserve to 100 per day for the first 30 days—''larger RespOrgs with enhanced connectivity to the [toll free] database'' would otherwise be able to more quickly to reserve sought-after numbers than smaller RespOrgs without enhanced connectivity.

22. We reject commenters' arguments that an auction is unfair because it favors parties with deep pockets. An auction allocates the number to the bidder willing to pay the most, but that willingness may derive from expected future revenues from a profitable business case, rather than from the bidders' current finances. Moreover, auctions should reflect the value of the toll free number in the marketplace and a bidder may be able to obtain financing based on anticipated profitability. We anticipate that a first-come, first-served approach will continue to be an appropriate assignment methodology in some circumstances, however. For instance, first-come, first-served assignment may be appropriate for less desirable numbers, or in instances where numbers made available via an auction are not assigned thereby. We expect that our experience with the 833 Auction will provide us with insight we can use when determining the best mechanism for assignment of a given set of numbers.

23. *Effective Assignment of Toll Free Resources.* Our revised assignment rule gives us a new option for the assignment of numbers, without removing currently available options. The Commission has extensive experience in public outreach and education about the auction process, including online tutorials for the auction application and bidding processes. Based on this experience, we disagree with the argument that providing adequate notice to the public about auction procedures will be unreasonably costly. Nor do we agree with commenters who argue that preparing for and participating in the auction will be unduly burdensome to participants. We recognize that individual subscribers or RespOrgs acquiring toll free numbers through an auction may incur some costs relating to the participation in the auction that they did not incur through the first-come, first-served process, but we believe those costs are outweighed by the benefits to the toll free system at large when toll free numbers are put to their highest-valued use. Many toll free numbers have a much greater value for certain subscribers. Some 150 RespOrgs participated in the 833 pre-code opening process, requesting over 72,000 numbers. This fact undermines the basic rationales on the effectiveness of first-come, first-served for mutually exclusive numbers—that first-come, first-served allocation requires less oversight, and avoids ''the need to resolve competing claims among subscribers to assignment of particular numbers.'' On the contrary, the Commission has been compelled to provide increased oversight by intervening multiple times to ensure new code openings are ''orderly and efficient'' and ''fair,'' and adjudicated numbering conflicts in at least two notable cases. Our practice of resolving competing claims has previously been resolved inefficiently in favor of the party most privileged with access to the faster reservation system. Instead of the number going to whichever entity happens to be first in the door (thereby preventing others, who may value it more, from getting it), use of

competitive bidding will give all entities an equal opportunity to express the value they place on any particular number. By increasing the likelihood that mutually exclusive toll free numbers are assigned to parties that will use the resource in the most productive way, we in turn increase the efficiency and equity of our number assignment process.

24. Revising the Commission's rules to allow us to assign numbers by auction, on a first-come, first-served basis, an alternative assignment methodology, or by a combination of the forgoing as circumstances require, gives the Commission the flexibility to adapt our assignment procedures to the circumstances and characteristics of the specific toll free numbers to be assigned. In any future toll free code release, the revised rule will not require the Commission to use competitive bidding and, if it decides to use competitive bidding, the Commission will not be confined to a specific auction design, or the designation of a particular auctioneer. Instead, for new toll free code openings, the Commission can determine the best method to proceed for assigning numbers, armed with the data collected in the 833 Auction.

B. The 833 Auction

1. The 833 Auction Established as an Experiment

25. We establish the 833 Auction as an experiment to analyze the most efficient way to use competitive bidding as a toll free number assignment method. We agree with one commenter who argues that, as a first step, the Commission should assign toll free numbers by auction on a ''limited, trial basis,'' which will allow us to ''study the impact of this new allocation method and make any necessary changes to serve the public interest.'' (By adopting the 833 Auction as an experiment, the actions we take today are also consistent with the recommendation of the Administrative Conference of the United States (ACUS) that agencies adopt pilot programs and learn from regulatory experience.) Thus, we will offer in this auction only the rights to use the 17,000 mutually exclusive numbers in the 833 toll free code that were identified pursuant to the *833 Code Opening Order*. Once the auction is complete, we direct Somos to assign those numbers to winning bidders based on the auction's results. We will continue to assign 833 numbers that are not part of the 833 Auction using our first-come, first-served approach.

26. After completion of the 833 Auction, and subsequent number assignments, the Bureau will issue a report outlining the outcomes of the 833 Auction, lessons learned, and future recommendations for toll free number assignment methodologies.

27. We intend to use this experiment as an opportunity to evaluate the contours of using competitive bidding for toll free assignments and to determine how to best use a market-based assignment to effectively assign toll free numbers. We also underscore the need to reform the current method of assigning highly desired toll free numbers. We envision that the experiment, as designed in this Report and Order and forthcoming Auction Procedures Public Notice, will meet our goals of equitable distribution and be used, as designed, for certain future toll free number assignments or be used for future assignments with refinements.

2. General Framework for the 833 Auction

28. In the *Toll Free Assignment NPRM,* the Commission ''invite[d] parties to . . . offer further economic, legal, or logistical insights about . . . auction designs and procedures.'' Given the experimental nature of using competitive bidding as a mechanism for assigning toll free numbers, we outline here a general framework for the 833 Auction and require a pre-auction proceeding in which we will seek public input on the procedures for the auction after the release of this Report and Order. We expect that our approach to the 833 Auction will be modeled on the rules and procedures governing auctions for wireless spectrum licenses, broadcast permits, and universal service support, where appropriate, given the success and familiar nature of those auctions.

29. Specifically, we will issue an Auction Comment Public Notice after the release of this Report and Order and will solicit public input on proposed application and bidding procedures, including specific proposals for application requirements and bidding mechanisms, such as bid processing and determining payments. Thereafter, we will release an Auction Procedures Public Notice, and will specify final auction procedures, including dates, deadlines, and other final details of the application and bidding processes. We require the auctioneer to implement the auction pursuant to the procedures specified in the Auction Procedures Public Notice. We conclude that, in addition to the general framework we provide here, the Commission's practice of finalizing auction procedures in the pre-auction process will give interested participants sufficient time and opportunity both to comment on the final procedures and to develop business plans in advance of the auction.

a. Auction Design

30. We adopt the proposal in the *Toll Free Assignment NPRM* to conduct the 833 Auction as a Vickrey single round, sealed-bid auction. In this type of auction, a qualified bidder can submit a sealed-bid for each available toll free number that the bidder wants. The 833 Auction will consist of only a single round of bidding, and the highest bidder for each toll free number will win the rights to that number, but will generally only pay the second highest bid for them. In the case of tied bids, a winning bidder may end up paying the tied bid amount. For the 833 Auction, we defer to the pre-auction process, the detailed procedures for bid processing and payment determination, including, among other things, how winners and payments will be determined in the case of tied bids and what to do if a toll free number receives only one bid in the single round of bidding.

31. A Vickrey auction can yield an equitable and efficient assignment of mutually exclusive toll free numbers as it incentivizes bidders to bid their true valuation. In particular, the amount paid by the winner (*i.e.,* the bidder with the highest bid) is determined by the second highest bid and does not depend on the exact amount of the winning bidder's own bid. This payment rule results in the winning bidder essentially receiving what it might view as a ''surplus,'' *i.e.,* the difference between its own bid and the second highest bid. A Vickrey auction thus encourages bidders to bid the true maximum they are willing to pay, while at the same time efficiently assigns the numbers to the bidders who have the highest valuations for the numbers. (As a first approximation, it is likely that individual valuations for toll free numbers are not dependent on another's valuation, at least beyond a broker's desire to purchase for resale. Moreover, to the extent that this is not the case, auction theory does not provide unambiguous direction as to optimal auction design. Thus, for our opening experiment in assigning toll free numbers via competitive bidding, we adopt the simple and transparent Vickrey auction.)

32. We conclude that the 833 Auction should use a single round rather than multiple rounds to keep the auction process for this experiment as simple and cost-effective as possible. As the

Commission observed in the *Toll Free Assignment NPRM,* a single round, sealed-bid auction is relatively easy for both the auctioneer (to implement) and participants (to participate in). In addition, a single round auction will be completed more quickly than a multi-round auction, and comes at a lower cost to the auctioneer and the participants. In fact, we do not believe that auction participants will be required to incur substantial time or expense to prepare for the auction. They have already determined which 833 numbers to reserve, thus spending some time and expense in reaching those determinations; the incremental effort on their part to participate in the auction is unlikely to impose an additional time or cost burden on them. And because of the lower cost of a single round Vickrey auction, we reject commenters' concerns that the costs to implement and run the auction will be excessive.

33. We also reject the notion that a Vickrey single round, sealed-bid auction will result in a scenario where inexperienced bidders will overbid and be unwilling or unable to pay the winning bid. A second-price auction encourages bidders to bid the true maximum that they are willing to pay, knowing they will not actually pay more than needed to outbid the second highest bidder. Also, we note that each bid is a binding commitment, so bidders know in advance that they should only submit bids that they are willing to pay. (This is true even in a Vickery auction, where the winning bidder will only pay the second highest bid, because the second highest bid price may be equal to (in case of a tie) or just slightly less than the winning bidder's submitted bid. As Power Auction notes, ''[i]t is important for bids to be binding commitments, because the lack of binding commitments could cause the auction process to be manipulated or to unravel.'') In addition, as discussed further below, entities interested in participating in an auction generally have to submit some form of financial security in order to participate. Further, consistent with the Commission's standard practice, we will ensure that prospective auction participants have an opportunity to become fully informed about the auction through public outreach and education, including online tutorials about the application and bidding processes.

34. *Alternative Auction Methodologies.* Although the Commission sought comment on alternative auction methodologies to consider for assigning the mutually exclusive 833 numbers, we decline to employ any such methodologies for the 833 Auction. (For example, the *Toll Free Assignment NPRM* sought comment on a pay-your-bid auction, whereby the highest bidder wins and pays its bid, and an open auction, such as a simultaneous multi-round auction used by the Commission for our spectrum auctions.) One commenter suggested that we use what it calls an ''open'' auction, specifically ''a simultaneous ascending clock auction with multiple independent clocks.'' While this type of auction has certain advantages over a single round, sealed-bid, Vickrey auction, we conclude that these advantages do not justify the additional complexity and expense of a multiple round auction at this time. (Power Auctions enumerates several advantages of an ''open'' auction, including (1) permitting bidders the opportunity of price discovery; (2) permitting bidders more control over the money spent on winning bids; (3) permitting bidders some ability to handle bids for numbers that may be viewed as substitutes; (4) maintaining privacy of auction participants' bids; and (5) potentially resulting in higher auction revenues and more efficient results.) While the Commission uses multiple round auctions and will continue to do so, the 833 Auction will be the Commission's first auction of the rights to use toll free numbers, and our intent for this experiment is to gather data to help inform future toll free assignment decisions while minimizing the complexity and cost to the Commission, auctioneer, and participants during the experiment. We also have limited information on which to base any estimate of the dollar amounts potential subscribers are willing to bid. Also, the relatively modest nature of the items to be auctioned—the rights to use toll free numbers, as opposed to spectrum licenses or Universal Service Fund support—seems at this juncture to warrant a less complex and costly type of auction. Thus, we do not want to create a more complex and costly auction than necessary at this early stage.

35. One commenter argues that a single round, sealed-bid Vickrey auction limits the ability of a bidder to develop a bidding strategy involving substitute numbers vis-à-vis an ''open'' auction. That commenter does not, however, provide a basis for its position that bidders in the 833 Auction will have a need for such a complex auction, or how such a need outweighs the impact to cost and complexity for this experimental auction. Further, unlike other auctions the Commission has conducted, such as auctions for spectrum and Universal Service Fund support, where some items may be substitutable, this auction allocates items for which managing bids across substitutes is less important. Similarly, there are important complementarities in bids for spectrum and Universal Service Fund support which we have no reason to believe apply to the toll free number market.

36. More specifically, the Commission has historically used multiple round bidding as the primary auction methodology in spectrum auctions. When implementing its spectrum auction authority, the Commission found that multiple round auctions provide needed information about the value of substitutable and complementary licenses and allows participants the flexibility to pursue back-up strategies during an auction, allowing the spectrum to go to its highest value use. The Commission recognized, however, that while multiple round auctions are preferable, if the value of the licenses or the number of bidders would be so low that the administrative costs of a multiple round auction may exceed its benefits, other auction methods are available. Our spectrum auctions, generally, involve many entities pursuing complex strategies weighing the cost of various quantities of spectrum within and between markets. Similarly, in competitive bidding for Universal Service Fund support, many participants are contemplating multiple markets that they are willing to serve based on the price of the subsidy. In the case of toll free numbers, there is limited information in the record that one number is a substitute for another or on how bidders will view the relative values of the available numbers. The Commission hopes to obtain such information through this auction.

37. In sum, because the Vickrey single round, sealed-bid auction should demand fewer resources from the Commission, the auctioneer, and the auction participants while still yielding an efficient allocation of toll free numbers, we believe it will help achieve our objectives for this experiment. We note, however, that we are not intending to foreclose the use of an ''open'' auction—or another auction methodology—in any future toll free number auctions. (To the contrary, we recognize that there are cases where an open auction may perform better than a sealed-bid auction.) We expect that the Bureau's report will address the success of the Vickrey single round, sealed-bid auction methodology, and compare it to alternative methodologies.

b. Auction Eligibility

38. Deciding which parties can participate in an auction is an integral part of the process. Although we generally require applicants for our auctions to demonstrate certain qualifications consistent with the regulatory objectives of a particular auction, it is also true that the broader the participation, the more likely it is that 833 numbers will be assigned to the highest-valuing bidders. For the 833 Auction, we will allow any party interested in obtaining an 833 number (potential subscriber) to participate directly in the auction or indirectly through a RespOrg. We also will not limit the 833 Auction to only those RespOrgs that participated in the 833 pre-code opening; any RespOrg may participate. We believe allowing all interested parties to participate directly in the auction will provide them with greater flexibility and control to accurately express their level of interest and will allow the Commission to glean as much information from the experiment as possible to better inform future toll free code opening assignments.

39. *833 Auction Not Limited to RespOrgs.* We will permit any potential subscriber to participate directly in the 833 Auction or indirectly through a RespOrg. (A toll free ''subscriber,'' per the rule revision we adopt today, is ''The entity that has been assigned a toll free number.'' Because we do not intend to limit auction participation to entities that already have been assigned numbers, we establish that ''potential subscribers''—any parties interested in subscribing to a toll free number—may participate in the 833 Auction. As auction participants, these parties will be obligated to comply with the Auctions Procedures Public Notice in this proceeding.) In the *Toll Free Assignment NRPM,* the Commission proposed to permit only RespOrgs to participate in the proposed auction, based on RespOrgs' role as manager and administrator of toll free records in the Toll Free Database. (The Commission also recognized ''the importance of RespOrgs as market makers'' and noted that RespOrgs ''may have strengths in maximizing the valuation of certain numbers, for example, by piecing together geographic coalitions of subscribers who may be unable to coordinate themselves.'') After reviewing the record, we conclude that allowing potential subscribers to directly participate will likely increase the efficiency of the auction while also addressing possible conflicts of interest between RespOrgs and potential subscribers. We agree with 800 Response, who argues that allowing potential subscribers to participate will minimize opportunities for participants to engage in undesirable and/or anticompetitive strategic behavior that could occur if a RespOrg and one or more of its subscribers were interested in the same 833 numbers. (If a RespOrg and one or more of its subscribers do not have an interest in the same 833 numbers, permitting RespOrgs to participate in the auction gives subscribers to option to have their RespOrgs bid on their behalf.) Therefore, we find it appropriate to allow potential subscribers to act on their own behalf and represent their own interests in the auction. (Potential subscribers also have the option to become a RespOrg by meeting various requirements for certification. By formally allowing potential subscribers the option to participate directly, non-RespOrg participants will not need to spend resources to become a RespOrg if they are concerned that current RespOrgs would not fully represent their interests.) We stress that if a potential subscriber directly participates in and is assigned a number via the 833 Auction, it must still work with a RespOrg after the auction to reserve the number in the Toll Free Database in accordance with our rules.

40. We do not go so far as to remove RespOrgs from the process of acquiring toll free numbers in the 833 Auction, as one commenter suggests. Because subscribers are familiar with working with RespOrgs to acquire toll free numbers and may prefer to continue to take advantage of RespOrg expertise here, we conclude that we should allow subscribers the choice of working with a RespOrg in the 833 Auction.

41. Some commenters oppose permitting potential subscribers to participate in the auction. For example, Somos claims that allowing subscribers to participate ''would introduce unnecessary and potentially costly administrative problems'' and Power Auctions advocates allowing only RespOrgs to participate since they can maximize valuations of certain numbers and including subscribers would increase the costs of running the auction. On the other hand, one commenter advocates excluding RespOrgs completely, and allowing only end-user customers to participate. We recognize the value added by RespOrgs as ''market makers'' (as the Commission recognized in the *Toll Free Assignment NPRM,* RespOrgs ''may have strengths in maximizing the valuation of certain numbers, for example, by piecing together geographic coalitions of subscribers who may be unable to coordinate themselves''), but find that allowing potential subscribers to participate in the auction will likely increase the efficiency of the auction, by increasing competition and reducing the likelihood of tacit collusion and other undesirable strategic behavior that can occur when there are very few auction participants. Although we recognize there may be additional cost in auction overhead by allowing more participants, we believe that the benefits to auction efficiency created by expanding the pool of potential participants identified above are worth the minimal expense in determining whether the additional participants are qualified to bid in the auction. And by allowing potential subscribers to bid on their own, we lower administrative costs for participants who choose not to place a bid through a RespOrg.

42. *Maximizing Auction Participation.* We will not otherwise limit the number of participants in the auction, such as by limiting RespOrg eligibility to participate in the 833 Auction only to those RespOrgs that participated in the 833 pre-code opening process. Permitting the maximum number of eligible participants to bid in the 833 Auction ensures a robust auction and results in the bidders with the highest willingness to pay being assigned a number, which is in the public interest. The inclusion of all RespOrgs and potential subscribers in the pool of eligible participants will also provide the Commission with greater information about the value of toll free numbers, increasing the value of the experiment. In furtherance of this goal, the Commission, along with Somos in its role as auctioneer, will undertake outreach efforts to promote maximum participation among RespOrgs and potential subscribers.

c. Application Process

43. In Commission auctions, interested parties must disclose certain information and make certain certifications in an application or series of applications. In the Commission auctions, we typically have a two-stage application filing process. In the pre-auction ''short-form'' application, a potential bidder will need to establish its eligibility to participate, providing, among other things, basic ownership information. After the auction, the Commission conducts a more extensive review of the winning bidders' qualifications to receive support through ''long-form'' applications. This information helps promote auction transparency and integrity and assists us in monitoring compliance with our

auction rules and procedures, including, for example, the prohibition against certain communications. We find it is necessary to qualify entities to participate in the auction, and therefore require interested entities to submit a short-form application to participate in the auction. The information and certification required in the short-form application, along with an upfront payment, will help determine if an applicant is qualified to bid in the 833 Auction. We will not require applicants to submit a long-form application after the conclusion of this auction, given the lack of need to verify winning bidders' qualifications in this context and to limit the administrative burden on bidders, the auctioneer, and the Commission.

(i) Short-Form Application Requirements

44. We establish here some basic requirements and limitations regarding applications to participate. We expect that each entity interested in bidding in the 833 Auction will be required to disclose certain information and make certain certifications to promote compliance with the framework we outline here and protect auction integrity. These submissions will promote the transparency and efficiency of the auction and reduce the instances of conflicts of interest and the likelihood of undesirable and/or anticompetitive strategic behavior by participants.

45. *A Potential Subscriber May Participate Through Only a Single Auction Applicant and Submit a Single Application.* Potential subscribers can participate in the 833 Auction through only a single auction applicant. In particular, a potential subscriber may not engage multiple applicants to bid for a particular number in which it is interested. This prohibition assures a level playing field for all bidders and prevents distortions in the information on bidder interests, by assuring that each auction participant has at most one bid per number in the single round.

46. We likewise prohibit a single party, or multiple parties with a controlling interest in common, from becoming qualified to bid based on multiple applications. While we will seek comment and decide how to define parties with common controlling interests in our pre-auction process, we anticipate utilizing the Commission's definitions adopted for similar purposes in our spectrum auctions. We employ this same prohibition in spectrum auctions to ensure that auction participants bid in a straightforward manner. We believe that this type of restriction is warranted in the 833 Auction and will address concerns raised in the record regarding the potential for undesirable strategic bidding behavior, which could harm other bidders.

47. *A RespOrg Can Apply on Behalf of Only a Single Potential Subscriber (Including Itself) per Number.* We recognize that allowing RespOrgs to serve as bidders for potential subscribers of toll free numbers may present the opportunity for certain auction participants to have more information about the competition for certain numbers. Such asymmetric information could be used in ways that adversely affect some potential subscribers. To mitigate the potential anticompetitive effects of RespOrgs bidding for potential subscribers, we will limit a RespOrg to representing a single potential subscriber (including itself) for the rights to use a particular number. We note that, under a different auction design (*e.g.,* in a multiple round auction) or with different eligibility requirements, a different limitation may be appropriate to help ensure that RespOrgs fully represent subscriber interests, but, for the 833 Auction, we find this limitation to be appropriate.

48. *Disclosures and Certifications.* To promote transparency as well as compliance with the limitations discussed above, we establish certain general requirements for applicant disclosures and certifications. Specifically, we expect that each auction participant—whether a potential subscriber or a RespOrg serving as a bidding agent—will be required to certify, as applicable, that it is not bidding on behalf of multiple interested parties (including itself) for the same toll free numbers or that it is only bidding through one entity for a given number. A RespOrg can bid on behalf of multiple subscribers, as long the subscribers it represents, as well as itself, are not bidding on the rights to use the same number(s). We will also require the applicants that have overlapping non-controlling interests to certify, during the application process, that they have established internal control procedures to preclude any person acting on behalf of an applicant from possessing information about the bids or bidding strategies of more than one applicant or communicating such information with respect to either applicant to another person acting on behalf of and possessing such information regarding another applicant. To enforce this prohibition, we expect that applicants will need to disclose the party on whose behalf it is bidding, for each toll free number that it selects. To enforce the prohibition, and to allow entities to comply with the prohibition on certain communications discussed below, we also expect that any entity wishing to participate in the 833 Auction will have to fully disclose information regarding the real party- or parties-in-interest in the applicant or application and the ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more. We also will also require applicants to provide additional information and make additional certifications in the application, as may be found in the pre-auction process to be necessary to implement our decisions in this Report and Order. By requiring these certifications and disclosures, we guard against potential conflicts of interest between a RespOrg and its customer subscriber(s), between a RespOrg's customer subscribers, and between RespOrgs with overlapping controlling interests seeking the rights to use the same toll free numbers. Moreover, such actions will help implement our overriding principle that each entity should participate through only one bidder, thus encouraging sincere bidding and enhancing the integrity of the auction.

(ii) Procedures for Processing Pre-Auction Applications

49. For the 833 Auction, we expect that applications to participate in the auction will be processed in a manner similar to applications to participate in spectrum license auctions. Specifically, no application will be accepted if, by the initial deadline, the applicant has failed to make the required certifications, *e.g.,* no additional applications will be accepted after the initial deadline. Put differently, no additional applications will be accepted after the deadline. Moreover, applicants will be afforded an opportunity to cure any identified minor defects after an initial review of the application. Applications to which major modifications are made after the deadline for submitting applications shall be denied. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or change of control of the applicant (pro forma transfers and assignments have not generally been considered to be major modifications), or the certifications required in the application. If an applicant fails to make necessary corrections before a resubmission deadline, the applicant would be found not qualified to bid.

d. Other Competitive Bidding Considerations for the 833 Auction

50. *Prohibition on Certain Communications.* For spectrum and universal service auctions, the Commission has adopted rules prohibiting an applicant from communicating certain auction-related information to another applicant from the auction application filing deadline until the post-auction deadline for winning bidders to file long-form applications. In these rules, ''applicant'' is defined broadly to include ''all controlling interest in the entity submitting a short-form application to participate in an auction . . . as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.'' This prohibition on certain communications is intended to reinforce existing antitrust laws, facilitate detection of collusive conduct, and deter anticompetitive behavior. While we believe the 833 Auction should have a similar prohibition on certain communications, we defer until the pre-auction process the details of the prohibition on certain communications, but absent unique factors that may be applicable to the 833 Auction we expect the prohibition to be generally consistent with our rule in spectrum auctions. Regardless of the procedures ultimately decided upon for the 833 Auction, participants will be subject to antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.

51. *Availability of Auction-Related Information During and After the Auction Process.* It is our objective that the 833 Auction be transparent and objective. Consistent with that objective, we conclude that the procedures to be established in the pre-auction process should address what auction-related information will be available to bidders and to the public during the auction process, and when any information withheld during the auction will be made publicly available.

52. *Upfront Payments and Default Payments.* Entities that are interested in participating in the 833 Auction will be required to demonstrate an ability to pay for the rights to use the numbers for which they intend to bid by submitting an upfront payment. Moreover, since bids are binding commitments, if a bidder fails to make full payment on its bid, or otherwise defaults, it should be subject to a default payment. We defer to the pre-auction process what the upfront payments and default payments for the 833 Auction should be, but we generally expect the approach to be modeled on those used in the Commission's spectrum auctions.

53. *Bidding Credits.* We will not adopt bidding credits for the 833 Auction. We recognize that bidding credits can provide economic opportunity for a wide range of participants. Given the experimental nature of this auction, however, we conclude bidding credits are not appropriate at this time. No commenters who advocate we incorporate bidding credits in the 833 Auction provide specifics about the size standards or size of the bidding credits that might be employed, and we have no prior basis for determining the appropriate amount of any such bidding credit. We further do not wish to confuse the lessons we take away from this experiment by including bidding credits, which would influence bidder behavior. Instead, we will consider all of the data collected from the 833 Auction to determine if bidding credits should be offered in any possible toll free number auctions in the future.

54. *Reserve Prices.* We also decline to establish reserve prices for the 833 Auction. (By ''reserve price,'' we refer to a minimum amount that must be reached in order for a number to be assigned after the auction closes.) Most commenters oppose establishing reserve prices, arguing that reserves may discourage entities from bidding. Our goal for this auction is to gain as much information as possible about the effectiveness of a market-based approach to toll free number assignment, and we are convinced by the record that a reserve price may discourage auction participation and, thereby, decrease the amount of information we gain from the auction. And because this is our first time using competitive bidding to assign toll free numbers, we have a limited basis on which to establish a reasonable and efficient reserve price.

55. *Bidding on Multiple Numbers.* Consistent with our proposal in the *Toll Free Assignment NPRM,* we will not limit the overall quantity of toll free numbers the rights to which can be acquired by an auction participant. Establishing such a limit could hamper the efficiency of the auction by constraining bidders who hold the highest valuations. Moreover, we wish to obtain as much information as possible from this experiment and believe any such constraint would limit the information derived from this experiment.

56. Similarly, we find it is unnecessary to permit package bidding (*i.e.,* single bids for the rights to groups of numbers) in the experiment. As the Commission stated in the *Toll Free Assignment NPRM,* though it is likely some bidders will demand the rights to multiple numbers, we do not believe valuation synergies warrant the additional complexity that package bidding brings. We desire to minimize the auctioneer's development costs for the auction interface and to simplify the bidding process for the auction participants. We expect the Bureau's post-auction report to address the auction's effectiveness, and to recommend whether any of the measures we have declined to adopt in the Report and Order—including package bidding—could be useful in deciding on future toll free assignment methods.

57. *Post-Auction Winning Bidder Public Notice.* Once the auction has been completed, we will release a public notice identifying the winning bidders and establishing the deadline for making final payment for winning bids. This public notice will also explain how unsold inventory—numbers that received no bids—will be assigned after the 833 Auction. As we have explained, any potential subscriber that participates directly in the auction and wins the rights to a number must still work through a RespOrg after the auction to reserve the number in the Toll Free Database in accordance with our rules.

3. Somos as Auctioneer for the 833 Auction

58. We establish Somos, the Toll Free Numbering Administrator, as the auctioneer for the 833 Auction. We believe this role is commensurate with its present statutory and regulatory duties and its responsibilities. The Commission established Somos as the Toll Free Numbering Administrator in the 2013 *Toll Free Governance Order.* There, we determined that Somos met the impartiality requirement of section 251(e)(1) of the Act—codified in section 52.12 of our rules—and was ''eligible to serve as neutral SMS administrator.'' As the auctioneer for the 833 Auction, Somos shall continue to implement impartially toll free number assignments, consistent with the Act and our implementing rules.

59. In its role as auctioneer, we require Somos to provide the infrastructure and software for online bidding and carry out other activities necessary to implement the auction. These activities include performing bidder education and other outreach;

accepting and reviewing applications to participate in the auction; accepting upfront payments; announcing qualified bidders and those not qualified to bid; accepting bids during a single round of bidding; accepting final payments for winning bids and distributing refunds for any upfront payments not applied to winning bids; activating in the toll free database the numbers won at auction and for which final payment has been made; and undertaking any other tasks in furtherance of the 833 Auction that the Commission deems appropriate and as elaborated in the Auction Procedures Public Notice. The Commission will maintain oversight of Somos's implementation of the 833 Auction and will re-direct it as necessary to most effectively execute the 833 Auction. To maintain oversight, the Commission will review tariff filings, issue specific instruction in the Auction Procedures Public Notice, and direct Somos under our broad authority over the Toll Free Numbering Administrator.

60. One commenter posits that the present Toll Free Numbering Administrator should not serve as the toll free number auctioneer because Somos ''has no experience in conducting auctions'' and it ''would be called upon to develop entirely new [auction] processes.'' We disagree. Somos has asserted that it is fully capable of executing the Commission's proposed auction, and we have no basis on which to question its assertion. Moreover, given the considerable expertise in number assignment and administration that Somos has gained since the Commission formally designated it as the Toll Free Numbering Administrator, we are confident that Somos will perform its auctioneer duties in accordance with the procedures established by the Auction Procedures Public Notice.

61. We also agree with Somos that it is critical ''to maintain continuity and stability in TFN [toll free number] administration.'' In contrast, were we to establish an independent auctioneer, the independent auctioneer would have to first coordinate with Somos to verify that the numbers available in the 833 Auction are indeed available. The independent auctioneer would then have to direct Somos to assign the number to the winning bidder. We find this step in the process unnecessary as Somos is capable to serve as auctioneer in accord with the specific and direct instruction to be set forth in the Auction Procedures Public Notice.

62. While we appreciate the novelty of our experiment in using competitive bidding in the toll free context, the Commission itself has a vast amount of experience in conducting auctions in other contexts. We will oversee Somos's implementation of the 833 Auction, along with our general oversight of numbering, to alleviate any concerns about auction execution. Moreover, a single-round, sealed-bid auction should not require complex software or administration.

63. For these reasons, we direct Somos to serve as the auctioneer of the 833 Auction. In the event Somos seeks to add outside personnel to assist with the auction in any way, it may do so provided that it retains the overall administrative responsibility and neutrality. (Section 251(e) requires the Commission to ''create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis.'') We further direct Somos to obtain an independent audit of the 833 Auction, including Somos's performance as auctioneer, after completion of the auction. In the event that the Bureau determines, and announces in a Public Notice, that the costs of conducting such an audit are unlikely to exceed the benefits—for example, because of low auction revenue—Somos need not obtain an audit.

64. In designating Somos as the auctioneer of the 833 Auction, we do not foreclose the Commission's ability to assign this role to a different entity, or through a different method, such as a competitive process, in a future toll free number auction. In its report on the outcomes of the 833 Auction, we direct the Bureau to evaluate Somos' performance as the auctioneer, including its technical execution and cost-effectiveness in conducting the auction. The results of the 833 Auction, including its costs and the degree of its financial success, ought to inform the Commission's method for assigning the role of auctioneer in future toll free number auctions.

65. *Auction Information.* To allow the Commission to make a fair and accurate assessment of the results and consequences of the 833 Auction, we require Somos to retain and make available to the Commission all data and information about the auction and its administration, gathered before, during, and after the auction. Such information includes, but is not limited to, information on the following: Winning and losing bids, bidders, administrative costs (including detailed costs to design the auction user interface, auction platform, and software to evaluate the auction results), and post-auction secondary market transfers. (Per the exception we establish today, the secondary market is limited to numbers assigned via competitive bidding. The mutually exclusive numbers in the 833 code assigned in the 833 Auction will therefore be eligible for secondary market transfers.) We also require Somos to make available to the Commission information on 833 numbers not included in the auction for comparison purposes. This data will enable us to get a complete picture of the viability of the 833 Auction and on competitive bidding as an assignment method for future toll free code openings.

4. 833 Auction Proceeds

66. We will use any net positive proceeds from the 833 Auction to defray the costs of administering toll free numbering incurred by the Toll Free Numbering Administrator [1] (*i.e.,* costs beyond conducting the auction) and, potentially, the North American Numbering Plan Administrator (NANPA). (The NANPA is currently Neustar, Inc. The Toll Free Numbering Administrator is Somos, a not-for-profit corporation that provides the Toll Free Numbering Administrator function pursuant to FCC tariff, subject to section 61.38 of the Commission's rules.) By ''net positive proceeds,'' we mean any amount by which revenues from the auction exceed the costs of conducting the auction. (Because Somos will also be developing and conducting the auction, the administrator's costs for the auction will be paid first from auction revenues.) Applying net positive proceeds in this manner is consistent with our authority in section 251(e) to administer numbering, and its requirement that the costs of administration be borne by carriers on a competitively neutral basis. As discussed in the *Toll Free Assignment NPRM,* it will benefit all toll free

[1] Somos is a not-for-profit corporation that provides the Toll Free Numbering Administrator function pursuant to FCC tariff, subject to section 61.38 of the Commission's rules. 47 CFR 61.38. Somos must file annual tariff revisions pursuant to the applicable part 61 rules for a dominant carrier, subject to the tariff requirements and enforcement of the Commission pursuant to the Act and the Commission's rules. *SMS/800 Order,* 28 FCC Rcd at 15342, paragraphs. 37 through38; *see also generally* Somos, Inc., Tariff F.C.C. No. 1 (2018), *https://s3.amazonaws.com/files-prod.somos.com/documents/SMS800FunctionsTariff.pdf* (Toll Free Tariff). Previous tariff information is available at *https://apps.fcc.gov/etfs/public/tariff.action?idTariff=787.* Tariff modifications must be filed each January 31 (following the close of its fiscal year, which is the calendar year) updating the rates for its services, effective during the next tariff year that begins in February. Each such filing must contain an updated cost of service study pursuant to section 61.38. *Id.* Based upon that cost study, Somos's rates and charges are adjusted to recover those forecasted costs over the ensuing tariff year.

subscribers and RespOrgs, as well as potentially all stakeholders in the 20 countries that are members of the NANP. (The NANP member countries are Anguilla, Antigua and Barbuda, Bahamas, Barbados, Bermuda, British Virgin Islands, Canada, Cayman Islands, Dominica, Dominican Republic, Grenada, Jamaica, Montserrat, Sint Maarten, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, Turks and Caicos Islands, and the United States (including American Samoa, Puerto Rico, U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands). NANP toll free numbers are allotted to all member countries. The Toll Free Numbering Administrator administers the pool of toll free number resources allotted to Canada, Sint Maarten, and the United States. Other NANP member countries administer toll free numbering outside of the Toll Free Numbering Administrator and its Toll Free Database.)

67. *Disbursement of 833 Auction Revenues That Exceed Somos's Auction Costs.* We conclude that net positive proceeds from the 833 Auction should be used to defray toll free numbering administration costs. We establish a methodology that will benefit Toll Free Numbering Administrator users while tempering resulting year-over-year change of administrative rates and charges. We therefore tie our disbursement to the ratio between net positive proceeds and Somos's revenue requirements. In the present tariff year, Somos's revenue requirement for toll free numbering administration services is $56.9 million. (The revenue requirement to cover forecasted costs for toll free numbering administration (referenced in the Tariff as ''SMS/800'') services in the current tariff period, covering February 15, 2018—February 14, 2019, is $56,933,855.) If net positive proceeds are less than five percent of Somos's then-current annual revenue requirement, then the net positive proceeds should be used only to defray toll free numbering administration costs for the tariff period immediately following the close of the 833 Auction. (Somos would make this determination based on its cost study for the ensuing tariff year, with and without cost reduction by offset of auction proceeds. Should there be any further auction proceeds received after such determination (*e.g.,* delayed payments accepted by the Commission), those proceeds will be applied/remitted in accordance with the manner set forth herein based on the then-cumulative amount of all auction proceeds from that auction, inclusive of such further auction proceeds. Auction proceeds amounting to five percent or less of the current annual revenue requirement applied to that single tariff year would likely have a *de minimis* effect on administrative rates and charges.) In the event that net positive proceeds exceed five percent of Somos's costs, then the net positive proceeds should be distributed evenly across five years for cost recovery under the tariff to minimize the impact on the administrative rates and charges. This approach avoids substantial year-over-year changes in administrative rates and charges, and allows RespOrgs and toll free subscribers to receive the cost reduction over an extended period if net positive proceeds are large enough to warrant. (The Commission has long sought to ''smooth'' the impact of its actions on telephony rates and charges.)

68. If net positive proceeds from the 833 Auction are large enough that applying them to defray toll free numbering administration costs over five years would result in a greater than 25 percent decrease in the revenue requirement for the Toll Free Numbering Administrator over the five-year period, then the excess of net positive proceeds beyond that amount will be remitted to the Billing and Collection (B&C) Agent for the NANP to be applied to defray the costs of NANP administration on behalf of its 20 member countries. (The present B&C Agent is Welch LLP. The B&C Agent will apply such funds prior to application of the various contribution factors and billing and collections processes.) We find that directing funds in excess of 25 percent for the benefit of the NANP strikes an appropriate balance, avoiding excessive fluctuations in the toll free tariff structure and benefitting both numbering administrations upon which toll free calling is dependent. The toll free numbers administered by the Toll Free Numbering Administrator are numbers within the NANP; it is therefore appropriate that such funds potentially go to defray the costs of the administering the NANP, which are borne by the countries served by the Toll Free Numbering Administrator and the other NANP member countries. In the event proceeds remitted to the B&C Agent exceed five percent of NANPA costs, then the net positive proceeds should be distributed evenly by the B&C Agent across five fiscal years of the NANPA, to minimize the impact on the NANPA rates and charges. If proceeds remitted to the B&C Agent are large enough that applying them to defray NANPA costs over five years would result in a greater than 25 percent decrease in the revenue requirement for the NANPA over the five-year period, then the excess of net positive proceeds beyond that amount will be distributed evenly by the B&C Agent across the next ten fiscal years of the NANPA.

69. *Recovery of 833 Auction Costs That Exceed Auction Revenues.* In the event the costs of the 833 Auction exceed its revenues, Somos may recover the resulting deficit in the same manner as other costs of toll free number administration: By incorporating them into the cost recovery mechanism in its tariff. These auction costs would be recovered along with all other allowable costs as part of the Toll Free Numbering Administrator's revenue requirement for the ensuing tariff year(s). This means that all RespOrgs and their underlying toll free subscribers will bear the auction's costs, just as they would share the benefit of any net auction proceeds. This approach is consistent with the cost-recovery system whereby all RespOrgs, and ultimately all toll free subscribers, bear the costs of numbering administration collectively. (Toll free numbering administration costs are recovered via the Toll Free Numbering Administrator's rates and charges, in the form of both transaction-specific fees, and monthly and other charges that are not tied to any specific transaction of number acquisition or change.)

70. We anticipate that the 833 Auction will benefit the entire toll-free industry by potentially lowering the monthly fees associated with toll free reservations. Accordingly, we reject the suggestion that equitable and efficient distribution of numbers requires that any costs of the 833 Auction exceeding auction revenues should be imposed only upon auction winners, or auction participants, under ''competitively neutral'' and ''cost-causer'' approaches. The 833 Auction is open to all RespOrgs and all potential subscribers. Moreover, the sharing of any net auction proceeds—or any auction deficit—does not of itself distort the toll free market in any fashion or favor one competitor in that marketplace over any other. As one commenter notes, consumers benefit directly from the use of toll free numbers, and ''reducing the input costs proportionally across RespOrgs will benefit all participants at their level of participation, thereby not distorting the toll-free market. The method proposed by the FCC is an efficient and effective mechanism for achieving that goal.''

71. Finally, for the reasons discussed above, if the deficit exceeds five percent of the forecasted cost of the Toll Free Numbering Administrator's services for

the next tariff year, we will require the recovery of any deficit over the ensuing five years of cost recovery under the tariff. Such a deficit will be divided equally among each of those five years, and incorporated into the administrator's cost studies and revenue requirements for each of those years. By this approach, we seek to avoid or reduce any substantial increases or fluctuations in the Toll Free Number Administrator's rates and charges due to any deficit.

72. *International Considerations.* One commenter notes the international nature of the NANP and asks ''what right does US, or its agencies, have to unilaterally benefit from an auction?'' This concern is misplaced. The United States will not unilaterally benefit from the 833 Auction's proceeds. Rather, as explained, net positive proceeds will be used to defray the costs of toll free number administration, benefitting all RespOrgs (and ultimately toll free subscribers) in those countries served by the Toll Free Numbering Administrator (Canada, Sint Maarten and the United States), and may also be used to defray the cost of NANP administration, benefitting all of its member countries. Even if the 833 Auction does not meet the 25 percent threshold, RespOrgs from these countries will benefit from lowered charges from the Toll Free Numbering Administrator. We note that a coalition of 10 Canadian RespOrgs, including major Canadian telecommunications service providers, supports our proposal to apply net auction proceeds to the Toll Free Numbering Administrator's administration costs. Applying net auction proceeds as set forth herein is consistent with the way Somos applies RespOrg fee proceeds, and the NANPA collects fees, through the B&C Agent, from member countries and service providers.

73. *Somos Tariff Implications.* We direct Somos to reflect any net positive proceeds or deficit related to the 833 Auction in the section 61.38 cost support filed with the Toll Free Tariff. We have previously said that Somos must support the costs of its Toll Free Database administration as part of its tariff filing with the Commission. The present Toll Free Tariff ''contains regulations, rates and charges'' applicable to administration of the Toll Free Database. As explained above, any auction proceeds will be applied to decrease Toll Free Database administration costs. This will allow Somos to lower certain of its charges, such as the monthly customer record administration charge. On the other hand, any auction deficit, *i.e.,* auction costs that exceed revenues from the auction, will be recovered via the tariff's cost recovery mechanism along with any other costs associated with administering the database. Inclusion of auction-related costs in the tariff's cost justification is necessary to show the impact of the 833 Auction on the tariffed charges to RespOrgs for use of the Toll Free Database.

5. Toll Free Numbers Used for Public Purposes

74. To ensure that the public interest is protected in the 833 Auction, we will set aside numbers in the 833 code that have been identified as mutually exclusive upon reasonable request by government entities and non-profit health and safety organizations. (Government entities include federal, state, local, and Tribal governments, and includes any such entities in all countries served by the Toll Free Numbering Administrator. Non-profit health and safety organizations must be 26 U.S.C. 501(c)(3) organizations.) In the *Toll Free Assignment NPRM,* the Commission sought comment on whether certain desirable toll free numbers should be set aside for use, without cost, by government agencies or by non-profit health, safety, education, or other non-profit public interest organizations. After reviewing the record, we find that ''[c]ertain desirable toll free numbers that promote health and safety should be set aside for use by government, without cost,'' as well as for use by non-profit health and safety organizations that meet the standard of our precedent.

75. Government (federal, state, local and Tribal) entities as well non-profit health and safety organizations have a unique relationship with toll free numbers. Not only do they use numbers to provide service to the public, but they also face unique budgeting challenges that may place toll free numbers assigned at auction out of reach. We disagree with commenters who argue that the public interest nature of non-profit organizations can be practically difficult to identify, and that setting aside numbers for non-profits presents a greater possibility of fraud and abuse. We further disagree with the suggestion that allowing private non-profit organizations to petition for numbers to be set aside is an act of ''eminent domain.'' This claim is fundamentally at odds with the toll free numbering scheme, which vests the Commission with authority to assign numbers ''equitabl[y].'' Further, subscribers have no property interest in toll free numbers. The Commission will use the 501(c)(3) designation as well our existing standard for public health and safety use to limit set-asides to those legitimate public interest organizations that truly promote public health and safety. This process is consistent with the way the Commission has considered petitions for reassignment of toll free numbers in the past.

76. We disagree with the arguments in the record that offering any public interest-related number set aside for governmental or non-profit entities is inherently not ''equitable'' under section 251(e)(1) of the Act. To the contrary, this set aside works to assuage concerns that some bidders—government and non-profit entities—may be precluded from obtaining desired numbers by our auction experiment. However, we are sympathetic to the argument that the public should have an opportunity to object to requests that numbers be set aside. For this reason, while we will consider requests from government and non-profit entities to set aside numbers in the 833 code that are already considered mutually exclusive, in order for a request to be considered, the government or non-profit entity must file a ''Petition for an 833 Toll Free Number'' with the Bureau in accordance with the Auction Procedures Public Notice. The Bureau will then solicit public comment prior to making its decision on the number request based on the public interest. (Petitions must be filed in ECFS in Docket No. WC 17–192 and CC Docket No. 95–155. Filing the petition does not guarantee the request will be granted.) We intend to maintain our standard for review consistent with the unusual and compelling public health and safety standards in Commission precedent and direct the Bureau to consider each application individually, on a case-by-case basis, as it is filed with the Commission. We note that while being a government entity or a 501(c)(3) organization is a necessary condition for a set aside, it is not in and of itself a sufficient condition and the Bureau must apply the unusual and compelling public health and safety standards discussed above. If, however, multiple government or non-profit entities file petitions requesting the same number for public health and safety purposes which meet the standard of our precedent, we direct Somos to conduct a lottery for the number among the requesting applicants. We believe a lottery is both an equitable and expedient way to resolve competing requests for the same number. The Commission will use the information obtained from this number set aside process to determine whether

we should continue to use it in future code openings.

6. Treatment of Trademark Holders

77. We decline to adopt proposals in the record to provide special treatment for trademark-holders. Specifically, commenters have suggested that we provide trademark-holders a right of first refusal or adopt new ''procedures'' to address instances of abuse of a number desired by a trademark-holder. We find that, as under the first-come, first-served methodology, ''concerns regarding trademark infringement and unfair competition . . . should be addressed by the courts under the trademark protection and unfair competition laws, rather than by the Commission.''

78. We disagree with commenters who argue that failing to provide special treatment for trademark-holders is contrary to the public interest. As 1–800–CONTACTS admits, the Lanham Act already serves to ''protect consumers by preventing confusion and unfair competition,'' and 1–800–FLOWERS has acknowledged its success policing use that infringes on its trademarks under the first-come, first-served methodology. Some commenters argue that a market-based approach to number assignment will encourage ''extortion'' of trademark-holders by bad actors, but we see no reason to diverge from our position that number assignment should be trademark-agnostic. An auction mechanism assigns numbers to those who value them most highly, and a secondary market—which we adopt on a limited basis below—only facilitates this assignment. Subscribers remain bound by trademark law once a number has been assigned. We also disagree with the argument of 1–800–CONTACTS that auctioning numbers without special protection for trademark holders ''would conflict with the statutory requirements of the Lanham Act.'' 1–800–CONTACTS does not identify with specificity which requirements the Commission would violate, or provide support for its argument. The United States Court of Appeals for the Sixth Circuit has found, in the context of an internet domain name registrar, that assigning an item to a third party is not ''use'' for purposes of a trademark infringement claim.

C. Secondary Markets for Toll Free Numbers

79. To fully realize the effectiveness of assigning numbers via competitive bidding, we allow for a secondary market of toll free numbers won at auction. In the *Toll Free Assignment NPRM,* the Commission sought comment on revising our rules to promote development of a secondary market for toll free numbers. We have reviewed the record, and agree with commenters who argue that our current rules may have a ''chilling impact . . . on private enterprise.'' Consistent with our goal of making the rights to use numbers available on an equitable basis by assigning them to those who can put the numbers to their best use, and with the record, we now allow for the development of a secondary market for numbers assigned via competitive bidding.

80. The Commission's current rules prevent three types of conduct that limit or preclude the development of a secondary market. First, the rules prevent brokering—''the selling of a toll free number by a private entity for a fee.'' Second, the rules prevent hoarding, which is the ''acquisition by a toll free subscriber . . . of more toll free numbers than the toll free subscriber intends to use for the provision of toll free service.'' Third, the rules prevent warehousing, a practice in which a RespOrg reserves toll free numbers ''without having an actual toll free subscriber for whom the numbers are being reserved.'' These rules not only preclude the sale of the rights to use toll free numbers—central to a secondary market—but also frustrate number sales by placing obligations on potential sellers.

81. As the Commission explained in the *Toll Free Assignment NPRM,* a secondary market appears to be ''an efficient and productive use of numbers'' because it ''permit[s] subscribers to legally obtain numbers which they value.'' It also promotes the efficient operation of an auction: Permitting the free acquisition and transfer of the rights to use numbers allows subscribers to purchase or sell numbers in response to the outcome of the auction, and limits pre-auction costs associated with estimating which—and how many—numbers a bidder may win. It further encourages value-creating entities to promote efficiency by procuring rights to numbers with an intent to sell those rights to other interested subscribers. The secondary market thus ensures that numbers are assigned to those parties who can most efficiently use them. Under our current system, by contrast, a party that desires a number most cannot ensure that it is assigned that number; and if it fails to be assigned that number, it has no mechanism to procure it after the initial assignment. An auction mechanism with a robust secondary market not only ensures that numbers are assigned to the bidder that values them most at the time of assignment, but also allows the rights to numbers to be reassigned when valuations change.

82. We disagree with commenters who claim that permitting a robust secondary market will lead to undesirable conduct and extortion. With an auction and secondary market, the rights to numbers will be assigned to those entities who value them most; differences in valuation do not reflect undesirable conduct or extortion. To the extent there is genuine misconduct, trademark and competition law serves to protect parties from bad actors. Further, the argument that allowing a secondary market will ''lead to premature exhaust'' is minimized by our decision to allow a secondary market only for those numbers assigned by auction. In the present experiment, the 833 Auction includes approximately 17,000 numbers—under one percent of all 833 numbers. To the extent our rules preventing a secondary market were adopted to limit exhaust, we do not believe this limited exception will significantly affect the exhaust of the entire pool of 833 numbers. Because creating this limited secondary market will not lead to premature exhaust, we see no need to adopt the proposal in the record that we ''assess[ ] a fixed monthly direct contribution from all toll-free number holders [to] discourage hoarding and warehousing'' in order to combat exhaust. Further, we disagree with CenturyLink's argument that we should not combine a secondary market with the 833 Auction experiment so that an auction ''may be adequately evaluated without the influence of other variables.'' As we have explained, a secondary market is an important component to a successful auction, because it allows auction participants to later transfer numbers in response to information learned at the auction. And exploring these two changes simultaneously will allow us to see how they work in conjunction with one another.

83. We also disagree with the argument that ''abandoning the brokering rule . . . violates the statutory mandate of equitable distribution of numbers.'' The secondary market is both ''orderly and efficient'' and ''fair.'' The secondary market is ''orderly'' because it is simple: Competing claims are resolved by assigning rights to a number to the party who values it most. The secondary market is ''efficient,'' as that term is interpreted under our precedent in this context, in that it will minimize number exhaust by allowing rights to numbers to be obtained without requiring the opening of a new code. Finally, the secondary market is ''fair''

because no potential subscribers are discriminated against; there is equal opportunity to participate in the secondary market.

84. To allow for a secondary market to develop, we adopt exceptions to the Commission's rules prohibiting the brokering, hoarding, and warehousing of toll free numbers for numbers acquired in an auction. (We also modify our rule limiting how long a number may remain in ''reserved'' status in order to harmonize that rule with the exceptions we adopt today.) Because, as explained, a secondary market can promote the efficiency of an auction, we find that it is appropriate that we apply our exceptions to numbers assigned via competitive bidding. Numbers which are eligible for this exception by virtue of having been assigned via competitive bidding do not lose their eligibility if they are sold or otherwise transferred to another subscriber. Numbers which are returned to the spare pool, however, do not retain eligibility for the exception simply because they were once assigned in an auction.

85. We decline, at this time, to mandate that fees associated with the sale of numbers on the secondary market go to the cost of toll free numbering administration borne by Somos. We are convinced by the record that our rules should not ''increase the costs to subscribers.'' However, as we have explained previously, in order to evaluate the operation of the secondary market, we direct Somos to maintain data on secondary market transactions and make that data available to the Commission. To facilitate the collection of data, RespOrgs will be required to provide subscriber information to Somos, including the new subscriber's name and contact information, and other limited information Somos deems necessary.

D. Other Toll Free Rule Revisions

86. To further modernize our decades-old toll free numbering rules, we adopt several definitional and technical updates to improve clarity and flexibility in toll free number assignment. We also incorporate recommendations of the North American Numbering Council (NANC, the Commission's Federal Advisory Committee on numbering matters) to revise our definitions and lag time rules to be consistent with our new market-based toll free assignment rule.

87. *NANC Report.* In the *Toll Free Assignment NPRM,* the Commission sought comment on whether to ''eliminate or revise any other toll free rules'' and specifically suggested sections 52.101(d) and 52.103 as potential targets for revision. After the release of the *NPRM,* the Bureau directed the NANC to recommend possible rule changes to promote a market-based approach to the assignment of toll free numbers. In response to this direction, the NANC Toll Free Number Assignment Modernization Working Group recommended revisions to sections 52.101 and 52.103 of our rules regarding general definitions and lag times.

88. *General Definitions.* We revise section 52.101(a) to replace the term ''Number Administration and Service Center'' (NASC) with the term ''Toll Free Numbering Administrator.'' (Section 52.101(a) currently defines ''Number Administration and Service Center'' as ''The entity that provides user support for the Service Management System and administers the Service Management System database on a day-to-day basis.'') Despite the fact that the Commission has used the term Toll Free Numbering Administrator for several years, our rules have not reflected that terminology. Our rules' reference to the NASC is now outdated, and this revision will update the Commission's rules to reflect current industry terminology. We further modify our definition, consistent with the NANC's recommendation, to reflect that the Toll Free Numbering Administrator role is filled by an entity appointed under our authority pursuant to section 251(e)(1) of the Act. Because the Toll Free Numbering Administrator serves the same purpose as the former NASC, however, we otherwise retain the same definition as to the role of the toll free administrator.

89. We further revise section 52.101(e) to expand the definition of ''Toll Free Subscriber.'' The Commission's rules currently define a Toll Free Subscriber as ''[T]he entity that requests a Responsible Organization to reserve a toll free number from the SMS database.'' Our revised rule establishes that a Toll Free Subscriber is ''The entity that has been assigned a toll free number.'' This change will make our definition consistent with our revised rule section 52.111, which allows for assignment via a market-based methodology, by making clear that a subscriber is not limited to requesting a toll free number be reserved in the toll free database. For example, a subscriber can be assigned a number through the competitive bidding process.

90. *Lag Times.* We make multiple revisions to section 52.103, which sets forth the various statuses of toll free numbers in the Toll Free Database. First, we adopt a new section 52.103(a)(10) to create a ''Transitional Status'' category for numbers that have been disconnected for less than four months, but for which no service provider intercept recording (also known as Exchange Carrier Intercept Recording) is being provided. (Transitional Status is thus distinct from Disconnect Status, where a service provider intercept recording (*i.e.,* a recording explaining that a number has been disconnected) is being provided.) The NANC comments, and we agree, that adding this Transitional Status will better align the Commission's rules with current industry practice.

91. Second, we modify section 52.103(d) to make the existing Disconnect Status rule compatible with a market-based number assignment approach. Section 52.103(d) requires disconnected numbers to stay in Disconnect Status for a period of up to four months, and then go to Spare Status at the end of that period. The NANC Report recommends amending the rule to allow numbers that have been in Disconnect Status for up to four months to go directly to Unavailable *or* Spare Status. (We note that numbers set-aside for a market-based assignment are placed in unavailable status.) We conclude, and the NANC agrees, that allowing numbers to go from Disconnect Status to Unavailable—rather than directly to Spare Status—will ensure that any number can be assigned by a market-based mechanism. This change will allow the Toll Free Numbering Administrator to send numbers that have been selected for market-based assignment directly into Unavailable rather than into Spare Status. We thus adopt this change, which will allow greater flexibility and further modernize the toll free assignment process.

92. Finally, we also adopt a change to section 52.103(f), ''Unavailable Status.'' The description of ''Unavailable Status'' in that section references DSMI, which has since been replaced by Somos as the Toll Free Numbering Administrator. The definition should be updated to refer to the Toll Free Numbering Administrator. This revision will ensure that the Commission's rules reflect current industry terminology. We also revise rule section 52.109(c) to change spare ''poll'' to spare ''pool,'' thus correcting a typographical error in this rule.

93. The ministerial revisions we adopt today are a logical outgrowth of the proposals in the *Toll Free Assignment NPRM.* As the Commission has previously explained, ''[a]n NPRM satisfies the logical outgrowth test if it 'expressly ask[s] for comment on a particular issue or otherwise ma[kes]

clear that the agency [is] contemplating a particular change.''' That test is satisfied here. The *Toll Free Assignment NPRM* expressly proposed a revision to the rules governing toll free number assignment to allow for assignment via competitive bidding. It further sought comment on whether to ''eliminate or revise any other toll free rules,'' with specific reference to sections 52.101(d) and 52.103 of the rules. Our ministerial revisions, with one minor exception, apply to sections 52.101 and 52.103. (The exception is our revision to section 52.109(c), correcting a typographical error in that rule.) Further, the revisions operate to harmonize those rules with the competitive bidding assignment methodology expressly noticed in the *Toll Free Assignment NPRM.* We find that ''parties should have anticipated that the rule [revisions] ultimately adopted [were] possible.'' We also find good cause, to the extent necessary, to adopt these ministerial changes. These revisions are insignificant and inconsequential to the industry and the public. Our revisions to sections 52.101(a), 52.103(a)(10), 52.103(f), and 52.109(c) either correct typographical errors or bring our rules into line with contemporary practice and do not increase or otherwise modify any entities' regulatory burden. Our revisions to sections 52.101(e) and 52.103(d) similarly do not impact any entities' regulatory burden, and only harmonize our rules to allow for the successful operation of the competitive bidding assignment methodology we adopt today.

E. Legal Authority

94. The Commission has found section 251(e)(1) of the Act ''to empower the Commission to ensure that toll free numbers, which are a scarce and valuable national public resource, are allocated in an equitable and orderly manner that serves the public interest.'' Pursuant to these statutory mandates, the Commission has the ''authority to set policy with respect to all facets of numbering administration in the United States,'' and a ''require[ment] . . . to ensure the efficient, fair, and orderly allocation of toll free numbers.'' The actions we take today meet the statutory requirement that numbers be made ''available on an equitable basis''—an auction and secondary market are both efficient and orderly, and fair. We also have clear authority to require Somos to serve as the auctioneer for 833 numbers and to comply with requirements adopted in this order. Section 251(e)(1) obligates the Commission to ensure its Toll Free Numbering Administrator administers ''telecommunications numbering and to make such numbers available on an equitable basis.'' And section 201(b) authorizes the Commission to ''prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this [Act].''

95. CenturyLink argues that we do not have authority to assign toll free numbers through competitive bidding because, unlike in the context of spectrum auctions, Congress did not specifically task the Commission with using competitive bidding for toll free numbers. Since the Act was adopted in 1934, however, Congress has stated with particularity the various means for assignment of spectrum licenses; the specific addition of an assignment via competitive bidding supplemented the previous Congressional direction to make licenses available via an application process or random assignment. By contrast, Congress has used much more general language in section 251 and thus given us broad discretion to administer numbering. In Congress's grant of ''exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States'' in section 251(e)(1), we find authority to employ any number assignment mechanisms which meet the statute's ''equitable basis'' requirement, including competitive bidding.

IV. Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rulemaking* (*Toll Free Assignment NPRM*) for the Toll Free Assignment Modernization proceeding. The Commission sought written public comment on the proposals in the *Toll Free Assignment NPRM,* including comment on the IRFA. The Commission received no comments on the IRFA. Because the Commission amends its rules in this Order, the Commission has included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.

A. Need for, and Objectives of, the Rules

2. In the *Toll Free Assignment NPRM,* the Commission reconsidered how to best meet the statutory mandate that it make toll free numbers ''available on an equitable basis.'' To this end, the Commission proposed and sought comment on numerous regulatory reforms to existing rules regarding toll free number assignment.

3. Pursuant to the objectives set forth in the *Toll Free Assignment NPRM,* this *Report and Order* (*Order*) adopts changes to Commission rules regarding toll free number assignment. Specifically, the *Order* (1) revises the Commission's toll free assignment rule to allow for the use of competitive bidding for toll free numbers; (2) establishes the use of competitive bidding to assign the over 17,000 mutually exclusive numbers in the 833 toll free code, identified pursuant to the *833 Code Opening Order;* (3) exempts numbers assigned via competitive bidding from the rules preventing the development of a secondary market; and (4) makes ministerial changes to our toll free number assignment rules. These modifications to our toll free number assignment rules will create a more efficient method of toll free number assignment, consistent with our statutory mandate. Ultimately, these reforms will ensure the equitable and efficient assignment of toll free numbers.

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

4. The Commission did not receive comments addressing the rules and policies proposed in the IRFAs in the *Toll Free Assignment NPRM.*

C. Response to Comments by the Chief Counsel for Advocacy of the SBA

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

6. The Chief Counsel did not file any comments in response to this proceeding.

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

7. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the final rules adopted pursuant to the *Order.* The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. (Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business

applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'') A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

8. The changes to our toll free number assignment rules affect obligations on wired and wireless telecommunications carriers, local exchange and interexchange carriers, local and toll resellers, prepaid calling card providers, and cable operators.

9. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data published in 2012 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.'' (The 2012 U.S. Census Bureau data for small governmental organizations are not presented based on the size of the population in each organization. There were 89,476 local governmental organizations in the Census Bureau data for 2012, which is based on 2007 data. As a basis of estimating how many of these 89,476 local government organizations were small, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000 in 2011. If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small.) Thus, we estimate that most governmental jurisdictions are small.

10. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

11. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

12. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees.

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

14. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone

communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. (The Small Business Act contains a definition of ''small business concern,'' which the RFA incorporates into its own definition of ''small business.'' SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis.) We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

15. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined above. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed rules.

16. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

17. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

18. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by rules adopted pursuant to the *Report and Order.*

19. *Prepaid Calling Card Providers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's Form 499 Filer Database, 500 companies reported that they were engaged in the provision of prepaid calling cards. The Commission does not have data regarding how many of these 500 companies have 1,500 or fewer employees. Consequently, the Commission estimates that there are 500 or fewer prepaid calling card providers that may be affected by the rules.

20. *Wireless Telecommunications Carriers (except Satellite*). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. (Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.'') Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

21. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by our actions today. (For the purposes of this FRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.) The Commission does not know how many of these licensees are small, as the Commission

does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

22. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.

23. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, a little less than one third of these entities can be considered small.

24. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.,* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA has established a size standard for this industry stating that a business in this industry is small if it has 1,500 or fewer employees. The 2012 Economic Census indicates that 367 firms were operational for that entire year. Of this total, 357 operated with less than 1,000 employees. Accordingly we conclude that a substantial majority of firms in this industry are small under the applicable SBA size standard.

25. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are currently 4,600 active cable systems in the United States. (This figure was derived from a August 15, 2015 report from the FCC Media Bureau, based on data contained in the Commission's Cable Operations and Licensing System (COALS).) Of this total, all but eleven cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

26. *Cable System Operators (Telecom Act Standard).* The Communications Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. (The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules.) Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

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

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

28. *Auction Applications and Certifications.* The *Order* establishes the use competitive bidding to assign the over 17,000 mutually exclusive numbers in the 833 toll free code, identified pursuant to the *833 Code Opening Order*. In order to participate in the competitive bidding process, a potential participant will be obligated to submit an application including information regarding, but not limited to, ownership information. Potential participants will also be required to submit certifications stating that they will follow certain auction rules and requirements, including the limitation that each auction participant bid on behalf of only one interested party (including itself) for the same toll free numbers.

29. *Secondary Market Transfers.* The *Order* exempts numbers assigned via competitive bidding from the rules

preventing the development of a secondary market. We require Somos, Inc., the Toll Free Numbering Administrator, to maintain information regarding post-auction secondary market transfers. Entities will be required to provide transaction information to Somos, including the new subscriber's name and contact information and other limited information as necessary.

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

30. In this *Order,* the Commission modifies its toll free number assignment rules to promote the efficient and equitable assignment of toll free numbers. Overall, we believe the actions in this document will reduce burdens on toll free number subscribers, potential subscribers, and Responsible Organizations, including any small entities.

31. In the *Order,* we find that revising our rule to allow for an auction-based assignment methodology will benefit smaller entities. Our first-come, first-served assignment methodology has allowed larger, more sophisticated entities to invest in systems that provided enhanced connectivity to the Toll Free Database, allowing these entities to be assigned desirable numbers before smaller competitors. An auction-based assignment methodology, by contrast, does not allow sophisticated entities this advantage.

32. In the *Order,* we also establish the use of a Vickrey single round, sealed-bid auction to assign the over 17,000 mutually exclusive numbers in the 833 toll free code, identified pursuant to the *833 Code Opening Order.* We conclude that the use of this type of auction is appropriate because it is simple to participate in, addressing concerns that an auction-based assignment methodology is more complicated than the first-come, first-served approach.

G. Report to Congress

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

V. Procedural Matters

34. *Congressional Review Act.* The Commission will send a copy of this *Report and Order,* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

35. *Paperwork Reduction Act of 1995 Analysis.* This Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA, 44 U.S.C. 3507. OMB, the general public, and other Federal agencies will be invited to comment on the revised information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

36. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules, as proposed, addressed in this Order. The FRFA is contained in Section IV above.

VI. Ordering Clauses

37. Accordingly, *it is ordered* that, pursuant to sections 1, 4(i), 201(b), and 251(e)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), and 251(e)(1), this Order *is adopted.*

38. *It is further ordered* that Part 52 of the Commission's rules *are amended* as set forth in Appendix A, and such rule amendments shall be effective thirty (30) days after publication of the rule amendments in the **Federal Register**.

39. *It is further ordered* that, pursuant to sections 1, 4(i), 5(c), and 251(e)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 155(c), 251(e)(1), Somos, Inc., the Toll Free Numbering Administrator, *is directed* to retain and make available to the Commission all data and information about the auction and its administration gathered before, during, and after the auction.

40. *It is further ordered* that, pursuant to section 251(e)(1) of the Communications Act of 1934, as amended, the Wireline Competition Bureau *is directed* to review specific petitions and, as necessary and after a notice and comment period, grant toll free numbers to governmental and non-profit entities where such grant is consistent with the public health and safety standards in Commission precedent.

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

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons set forth above, part 52 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 52—NUMBERING

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

Authority: 47 U.S.C. 151, 152, 153, 154, 155, 201–205, 207–209, 218, 225–227, 251–252, 271, 332, unless otherwise noted.

Subpart D—Toll Free Numbers

■ 2. Amend § 52.101 by revising paragraphs (a) and (e) to read as follows:

§ 52.101 General definitions.

* * * * *

(a) *Toll Free Numbering Administrator (TFNA).* The entity appointed by the Commission under its authority pursuant to 47 U.S.C. 251(e)(1) that provides user support for the Service Management System database and administers the Service Management System database on a day-to-day basis.

* * * * *

(e) *Toll Free Subscriber.* The entity that has been assigned a toll free number.

* * * * *

■ 3. Amend § 52.103 by adding paragraphs (a)(10) and (b)(1); adding and reserving paragraph (b)(2); and revising paragraphs (d) and (f) to read as follows:

§ 52.103 Lag times.

(a) * * *

(10) *Transitional Status.* Toll free numbers that have been disconnected for less than four months, but for which no Exchange Carrier Intercept Recording is being provided.

(b) * * *

(1) Toll free numbers assigned via competitive bidding may remain in reserved status for a period of unlimited duration.

(2) [Reserved]

* * * * *

(d) *Disconnect Status.* Toll free numbers must remain in disconnect or a combination of disconnect and transitional status for up to 4 months. No requests for extension of the 4-month disconnect or transitional interval will be granted. All toll free numbers in disconnect status must go directly into the spare or unavailable category upon expiration of the 4-month disconnect interval. A Responsible Organization may not retrieve a toll free number from disconnect or transitional status and return that number directly to working status at the expiration of the 4-month disconnect interval.

* * * * *

(f) *Unavailable Status.* (1) Written requests to make a specific toll free number unavailable must be submitted to the *Toll Free Numbering Administrator (TFNA)* by the Responsible Organization managing the records of the toll free number. The request shall include the appropriate documentation of the reason for the request. The *Toll Free Numbering Administrator (TFNA)* is the only entity that can assign this status to or remove this status from a number. Responsible Organizations that have a *Toll Free Subscriber* with special circumstances requiring that a toll free number be designated for that particular subscriber far in advance of its actual usage may request that the *Toll Free Numbering Administrator (TFNA)* place such a number in unavailable status.

(2) Seasonal numbers shall be placed in unavailable status. The Responsible Organization for a *Toll Free Subscriber* who does not have a year round need for a toll free number shall follow the procedures outlined in § 52.103(f)(1) of these rules if it wants the *Toll Free Numbering Administrator (TFNA)* to place a particular toll free number in unavailable status.

■ 4. Amend § 52.105 by adding paragraph (f) to read as follows:

§ 52.105 Warehousing.

* * * * *

(f) The provisions of this section shall not apply to toll free numbers assigned via competitive bidding or to numbers transferred under this exception.

■ 5. Amend § 52.107 by adding paragraph (c) to read as follows:

§ 52.107 Hoarding.

* * * * *

(c) *Toll Free Numbers Assigned via Competitive Bidding.* The provisions of this section shall not apply to toll free numbers assigned via competitive bidding or to numbers transferred under the exception to § 52.105 contained in paragraph (f) of that section.

■ 6. Amend § 52.109 by revising paragraph (c) to read as follows:

§ 52.109 Permanent cap on number reservations.

* * * * *

(c) The Wireline Competition Bureau shall modify the quantity of numbers a Responsible Organization may have in reserve status or the percentage of numbers in the spare pool that a Responsible Organization may reserve when exigent circumstances make such action necessary. The Wireline Competition Bureau shall establish, modify, and monitor toll free number conservation plans when exigent circumstances necessitate such action.

■ 7. Revise § 52.111 to read as follows:

§ 52.111 Toll free number assignment.

Toll free telephone numbers must be made available to Responsible Organizations and subscribers on an equitable basis. The Commission will assign toll free numbers by competitive bidding, on a first-come, first-served basis, by an alternative assignment methodology, or by a combination of the foregoing options.

[FR Doc. 2018–22674 Filed 10–22–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–2016–0046]

RIN 2127–AL72

Federal Motor Vehicle Theft Prevention Standard; Final Listing of 2017 Light Duty Truck Lines Subject to the Requirements of This Standard and Exempted Vehicle Lines for Model Year 2017

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule announces the annual update to the listings of light duty truck lines subject to the requirements and vehicle lines exempted from the requirements in the theft prevention standard. Specifically, this final rule announces that there were no new light-duty truck (LDT) lines added because none became subject to the theft prevention standard for MY 2017. This final rule also identifies those vehicle lines exempted from parts marking requirements and removes the names of vehicle lines whose production has been discontinued more than 5 years.

DATES: This final rule is effective October 23, 2018.

FOR FURTHER INFORMATION CONTACT: Hisham Mohamed, Consumer Standards Division, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, 1200 New Jersey Avenue SE, (NRM–310, Room W43–437) Washington, DC 20590. Mr. Mohamed's telephone number is 202–366–0307. His fax number is 202–493–2990.

SUPPLEMENTARY INFORMATION: The theft prevention standard (49 CFR part 541) applies to (1) all passenger car lines; (2) all multipurpose passenger vehicle (MPV) lines with a gross vehicle weight rating (GVWR) of 6,000 pounds or less; (3) low-theft light-duty truck (LDT) lines with a GVWR of 6,000 pounds or less that have major parts that are interchangeable with a majority of the covered major parts of passenger car or MPV lines; and (4) high-theft LDT lines with a GVWR of 6,000 pounds or less.

The purpose of the theft prevention standard is to reduce the incidence of motor vehicle theft by facilitating the tracing and recovery of parts from stolen vehicles. The standard seeks to facilitate such tracing by requiring that vehicle identification numbers (VINs), VIN derivative numbers, or other symbols be placed on major component vehicle parts. The theft prevention standard requires motor vehicle manufacturers to inscribe or affix VINs onto covered original equipment major component parts, and to inscribe or affix a symbol identifying the manufacturer and a common symbol identifying the replacement component parts for those original equipment parts, on all vehicle lines subject to the requirements of the standard.

Section 33104(d) provides that once a line has become subject to the theft prevention standard, the line remains subject to the requirements of the standard unless it is exempted under section 33106. Section 33106 provides that a manufacturer may petition annually to have one vehicle line exempted from the requirements of section 33104, if the line is equipped with an antitheft device meeting certain conditions as standard equipment. The exemption is granted if NHTSA

determines that the antitheft device is likely to be as effective as compliance with the theft prevention standard in reducing and deterring motor vehicle thefts.

The agency annually publishes the names of those LDT lines that have been determined to be high theft pursuant to 49 CFR part 541, LDT lines that have been determined to have major parts that are interchangeable with a majority of the covered major parts of passenger car or MPV lines, and vehicle lines that are exempted from the theft prevention standard under section 33104. Appendix A to part 541 identifies those LDT lines that are or will be subject to the theft prevention standard beginning in a given model year. Appendix A–I to part 541 lists those vehicle lines that are or have been exempted from the theft prevention standard.

For MY 2017, there are no new LDT lines that will be subject to the theft prevention standard in accordance with the procedures published in 49 CFR part 542. However, appendix A to part 541 is amended to remove two vehicle lines that have been discontinued more than 5 years ago: The Chevrolet S–10 and the GMC Sonoma.

For MY 2017, appendix A–1 identifies those vehicle lines that have been exempted by the agency from the parts-marking requirements of part 541 and is amended to include eleven vehicle lines newly exempted in full. The eleven exempted vehicle lines are the BMW MINI Countryman (MPV), Chevrolet Bolt, Fiat 124 Spyder, Honda Pilot, Hyundai IONIQ, Jaguar XE, Jeep Compass, Lexus RX, Lincoln MKC, Maserati Levante (MPV) and the Tesla Model 3.

The agency is removing the Lincoln Town Car, Mercury Mariner, Mercury Grand Marquis, Buick Lucerne, Pontiac G6, Saturn Aura, Mazda Tribute and Nissan Versa (2008–2011), vehicle lines from the appendix A–I listing because they have been discontinued more than 5 years ago. The agency is also removing the Cadillac Eldorado, Cadillac Concours, Oldsmobile Ninety-Eight, Pontiac Firebird, Chevrolet Camaro (1990–2002) and Oldsmobile Eighty-Eight vehicle lines from the appendix A–II listing because they have also been discontinued more than 5 years ago. The agency will continue to maintain a comprehensive database of all exemptions on our website. However, we believe that re-publishing a list containing vehicle lines that have not been in production for a considerable period of time is unnecessary.

The vehicle lines listed as being exempt from the standard have previously been exempted in accordance with the procedures of 49 CFR part 543 and 49 U.S.C. 33106. Therefore, NHTSA finds good cause under 5 U.S.C. 553(b)(3)(B) that notice and opportunity for comment on these listings are unnecessary. Further, public comment on the listing of selections and exemptions is not contemplated by 49 U.S.C. chapter 331. For the same reasons, since this revised listing only informs the public of previous agency actions and does not impose additional obligations on any party, NHTSA finds good cause under 5 U.S.C. 553(d)(3) that the amendment made by this document should be effective as soon as it is published in the **Federal Register**.

Regulatory Impacts

A. Executive Order 12866, Executive Order 13563 and the Department of Transportation's regulatory policies provide for making determinations on whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Orders. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This final rule was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. It will not impose any new burdens on vehicle manufacturers. This document informs the public of previously granted exemptions. Since the only purpose of this final rule is to inform the public of previous actions taken by the agency no new costs or burdens will result.

B. Executive Order 13771

Executive Order 13771 titled ''Reducing Regulation and Controlling Regulatory Costs,'' directs that, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed. In addition, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs. Only those rules deemed significant under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' are subject to these requirements. As discussed above, this rule is not a significant rule under Executive Order 12866 and, accordingly, is not subject to the offset requirements of Executive Order 13771.

C. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment as it merely informs the public about previous agency actions. Accordingly, no environmental assessment is required.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. As discussed above, this final rule only provides better information to the public about previous agency actions.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually ($120.7 million as adjusted annually for inflation with base year of 1995). The assessment may be combined with other assessments, as it is here.

This final rule will not result in expenditures by State, local or tribal governments or automobile manufacturers and/or their suppliers of more than $120.7 million annually. This document informs the public of previously granted exemptions. Since the only purpose of this final rule is to inform the public of previous actions taken by the agency, no new costs or burdens will result.

F. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ''Civil Justice Reform,'' [1] the agency has considered whether this final rule has any retroactive effect. We conclude that it would not have such an effect as it only informs the public of previous agency actions. In accordance with section 33118 when the Theft Prevention Standard is in effect, a State or political subdivision of a State may not have a different motor vehicle theft prevention standard for a motor vehicle or major replacement part. Title 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909. Section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

The Department of Transportation has not submitted an information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). This rule does not impose any new information collection requirements on manufacturers.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 541 is amended as follows:

PART 541—[AMENDED]

■ 1. The authority citation for part 541 is revised to read as follows:

Authority: 49 U.S.C. 33101, 33102, 33103, 33104, 33105 and 33106; delegation of authority at 49 CFR 1.95.

Appendix A to Part 541—[Removed and Reserved]

■ 2. Appendix A to part 541 is removed and reserved.

■ 3. Appendix A–I to part 541 is revised to read as follows:

Appendix A–I to Part 541—Lines With Antitheft Devices Which Are Exempted From the Parts-Marking Requirements of This Standard Pursuant to 49 CFR Part 543

Manufacturer	Subject lines
BMW	MINI, MINI Countryman (MPV),[1] X1 (MPV), X1 Car Line (2012–2015), X3, X4, X5, Z4, 1 Car Line, 3 Car Line, 4 Car Line, 5 Car Line, 6 Car Line, 7 Car Line.
CHRYSLER	200, 300C, Dodge Charger, Dodge Challenger, Dodge Dart, Dodge Journey, Fiat 500, Jeep Cherokee, Jeep Compass,[1] Jeep Grand Cherokee, Jeep Patriot, Jeep Wrangler, Town and Country MPV.
FORD MOTOR CO	C-Max, Edge, Escape, Explorer, Fiesta, Focus, Fusion, Lincoln MKC,[1] Lincoln MKX, Mustang, Taurus.
GENERAL MOTORS	Buick LaCrosse/Regal, Buick Verano, Cadillac ATS, Cadillac CTS, Cadillac DTS, Cadillac SRX, Cadillac XTS, Chevrolet Bolt,[1] Chevrolet Camaro, Chevrolet Corvette, Chevrolet Cruze, Chevrolet Equinox, Chevrolet Impala/Monte Carlo, Chevrolet Malibu, Chevrolet Sonic, Chevrolet Spark, GMC Terrain.
HONDA	Accord, Acura TL, Civic, CRV, Pilot.[1]
HYUNDAI	Azera, Equus, Genesis, IONIQ.[1]
JAGUAR	F-Type, XE,[1] XF, XJ, XK, Land Rover Discovery Sport, Land Rover LR2, Land Rover Range Rover Evoque.
MASERATI	Ghibli, Levante (SUV),[1] Quattroporte.
MAZDA	2, 3, 5, 6, CX–3, CX–5, CX–7, CX–9, Fiat 124 Spyder,[1] MX–5 Miata.
MERCEDES-BENZ	smart USA fortwo, smart Line Chassis. SL-Line Chassis (SL-Class) (the models within this line are): SL400, SL550, SL 63/AMG, SL 65/AMG. SLK-Line Chassis (SLK-Class) (the models within this line are): SLK 250, SLK 300, SLK 350, SLK 55 AMG. S-Line Chassis (S/CL/S-Coupe Class) (the models within this line are): S450, S500, S550, S600, S55, S63 AMG, S65 AMG, CL55, CL65, CL500, CL550, CL600. NGCC Chassis Line (CLA/GLA/B-Class) (the models within this line are): B250e, CLA250, CLA250 4MATIC, CLA45 4MATIC AMG, GLA250, GLA45 AMG. C-Line Chassis (C-Class/CLK/GLK-Class) (the models within this line are): C63 AMG, C240, C250, C300, C350, CLK 350, CLK 550, CLK 63AMG, GLK250, GLK350. E-Line Chassis (E-Class/CLS Class) (the models within this line are): E55, E63 AMG, E320 BLUETEC, E350 BLUETEC, E320/E320DT CDi, E350/E500/E550, E400 HYBRID, CLS400, CLS500, CLS55 AMG, CLS63 AMG.
MITSUBISHI	Eclipse, Endeavor, Galant, iMiEV, Lancer, Outlander, Outlander Sport, Mirage.
NISSAN	Altima, Cube, Juke, Leaf, Maxima, Murano, NV200 Taxi, Pathfinder, Quest, Rogue, Sentra, Versa Hatchback, Infiniti G (2003–2013), Infiniti M (2004–2013), Infiniti Q70, Infiniti Q50/60, Infiniti QX60.
PORSCHE	911, Boxster/Cayman, Macan, Panamera.
SAAB	9–3, 9–5.
SUBARU	Forester, Impreza, Legacy, B9 Tribeca, Outback, WRX, XV Crosstrek.
SUZUKI	Kizashi.
TESLA	Model 3,[1] Model S, Model X.
TOYOTA	Camry, Corolla, Highlander, Lexus ES, Lexus GS, Lexus LS, Lexus RX,[1] Prius, RAV4, Sienna.
VOLKSWAGEN	Audi A3, Audi A4, A4 Allroad MPV, Audi A6, Audi A8, Audi Q3, Audi Q5, Audi TT, Beetle, Eos, Golf/Rabbit/GTI/R32, Jetta, Beetle, Passat, Tiguan.
VOLVO	S60.

[1] Granted an exemption from the parts marking requirements beginning with MY 2017.

[1] *See* 61 FR 4729, February 7, 1996.

Appendix A–II to Part 541—[Removed and Reserved]

■ 4. Appendix A–II to part 541 is removed and reserved.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

Heidi R. King,

Deputy Administrator.

[FR Doc. 2018–23045 Filed 10–22–18; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170828822–70999–03]

RIN 0648–XG552

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of Maine is transferring a portion of its 2018 commercial summer flounder quota to the State of Connecticut. This quota adjustment is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised commercial quotas for Maine and Connecticut.

DATES: Effective October 22, 2018, through December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Management Specialist, (978) 281–9180.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.110. These regulations require annual specification of a commercial quota that is apportioned 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, and the initial 2018 allocations were published on December 22, 2017 (82 FR 60682), and corrected January 30, 2018 (83 FR 4165).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan, as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i)(A) through (C) in the evaluation of requests for quota transfers or combinations.

Maine is transferring 2,500 lb (1,134 kg) of summer flounder commercial quota to Connecticut through mutual agreement of the states. Based on the initial quotas published in the 2018 Summer Flounder, Scup, and Black Sea Bass Specifications and subsequent adjustments, the revised summer flounder quotas for calendar year 2018 are now: Maine, 561 lb (254 kg); and Connecticut, 147,768 lb (67,026 kg).

Classification

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

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

Dated: October 18, 2018.

Karen H. Abrams,

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

[FR Doc. 2018–23137 Filed 10–22–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 180208146–8946–01]

RIN 0648–XG025

Pacific Island Pelagic Fisheries; 2018 U.S. Territorial Longline Bigeye Tuna Catch Limits

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

ACTION: Final specifications.

SUMMARY: In this final rule, NMFS specifies a 2018 limit of 2,000 metric tons (t) of longline-caught bigeye tuna for each U.S. Pacific territory (American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI)). NMFS will allow each territory to allocate up to 1,000 t each year to U.S. longline fishing vessels in a valid specified fishing agreement. As an accountability measure, NMFS will monitor, attribute, and restrict (if necessary), catches of longline-caught bigeye tuna, including catches made under a specified fishing agreement. These catch limits and accountability measures support the long-term sustainability of fishery resources of the U.S. Pacific Islands.

DATES: The final specifications are effective October 22, 2018, through December 31, 2018. The deadline to submit a specified fishing agreement pursuant to 50 CFR 665.819(b)(3) for review is November 21, 2018.

ADDRESSES: Copies of the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (Pelagic FEP) are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, or *www.wpcouncil.org.*

NMFS prepared environmental analyses that describe the potential impacts on the human environment that would result from the action. Copies of those analyses, which include a 2018 environmental assessment (EA) and a finding of no significant impact (FONSI), are available from *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0026,* or from Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

FOR FURTHER INFORMATION CONTACT: Rebecca Walker, NMFS PIRO Sustainable Fisheries, 808–725–5184.

SUPPLEMENTARY INFORMATION: NMFS is specifying a catch limit of 2,000 t of longline-caught bigeye tuna for each U.S. territory in 2018. NMFS is also authorizing each territory to allocate up to 1,000 t of its 2,000 t bigeye tuna limit to U.S. longline fishing vessels permitted to fish under the Pelagic FEP. NMFS will monitor catches of longline-caught bigeye tuna by the longline fisheries of each territory, including catches made by U.S. longline vessels operating under specified fishing agreements. The criteria that a specified fishing agreement must meet, and the process for attributing longline-caught bigeye tuna, will follow the procedures in 50 CFR 665.819. When NMFS projects that a territorial catch or allocation limit will be reached, NMFS will, as an accountability measure, prohibit the catch and retention of longline-caught bigeye tuna by vessels in the applicable territory (territorial catch limit), and/or vessels in a specified fishing agreement (allocation limit).

You may find additional background information on this action in the preamble to the proposed specifications published on August 8, 2018 (83 FR 39037).

Comments and Responses

On August 8, 2018, NMFS published the proposed specifications and request for public comments (83 FR 39037); the comment period closed on August 23, 2018. In light of the decision in *Territory of American Samoa* v. *NMFS, et al.* (16–cv–95, D. Haw), NMFS specifically invited public comments that would address the impact of the proposed action on cultural fishing in American Samoa. NMFS received no comments addressing cultural fishing.

NMFS received comments only from the Hawaii Longline Association (HLA) on the proposed specifications and the draft EA. NMFS considered the public comments, and responds to comments below.

Comment 1: NMFS should act thoughtfully and quickly in completing this rulemaking process. In past years, the deep-set fishery in the Western and Central Pacific Ocean (WCPO) and the Eastern Pacific Ocean (EPO) attained the U.S. bigeye tuna catch limits in each area. As a result, many U.S. deep-set vessels were unable to fish because they were not able to allocate catch pursuant to already-executed specified fishing agreements. Such delays in rulemaking impede the achievement of the goals of the Pelagic FEP.

Response: NMFS reviews the proposed catch and allocation limits for consistency with the provisions of the Magnuson-Stevens Act, the Pelagic FEP, decisions of the Western and Central Pacific Fisheries Commission (WCPFC), and other applicable laws. This review requires preparation of comprehensive supporting environmental analyses to ensure the conservation of affected fish stocks and protected species. While NMFS is committed to preparing analyses before the fishery could reach the WCPO bigeye tuna limit, we also encourage HLA to consider industry-led actions in both the WCPO and the EPO that might reduce the likelihood of reaching a catch limit, or otherwise alleviate the impact of a closure.

Comment 2: The proposed rule will provide substantial benefits for the Hawaii-based longline fisheries, the Hawaii seafood market, the territories, and protected species.

Response: NMFS agrees. We are satisfied that this action (which is identical to the catch and allocation limits implemented in 2017 (82 FR 47642, Oct. 13, 2017)) addresses the conservation and management needs of bigeye tuna in the western and central Pacific Ocean, and considers the needs of fishing communities of the U.S. Pacific Islands, and the impacts to protected species.

Comment 3: Transferred effects caused by closing Hawaii-based longline fisheries have detrimental impacts on local Hawaii seafood markets and on protected species that are caught more frequently by foreign fisheries. HLA provided copies of scientific papers on transferred effects, and requested that NMFS include these papers, along with its comment letter, in the administrative record for this rulemaking.

Response: NMFS acknowledges the concept of transferred effects during a closure of the U.S. longline fleet, and we have posted HLA's comment letter and enclosures at *www.regulations.gov.*

Comment 4: The issuance of the proposed rule will have no significant impacts on the WCPO bigeye tuna stock.

Response: NMFS agrees, and is satisfied that this action is consistent with the conservation and management needs of bigeye tuna in the WCPO.

Comment 5: HLA notes that the proposed limits are substantially more stringent than conservation measures adopted by WCPFC, which do not establish any bigeye limits for the Territories, and questions whether there is a factual basis to limit each territory to a 1,000 t allocation.

Response: This action implements the recommendation from the Council's 172nd meeting, in March 2018, that NMFS specify for each U.S. participating territory, a 2,000 t longline bigeye catch limit and specify that each territory can each allocate up to 1,000 t of their bigeye catch limit. Utilizing the best scientific information available, NMFS has determined that these catch and allocation limits are consistent with WCPFC objectives to conserve the bigeye stock. NMFS agrees that the WCPFC has not adopted bigeye limits for the U.S. Territories, and notes that the Council has recommended amending the Pelagic FEP and Federal regulations to remove the requirement that NMFS must first specify catch limits for the territories before specifying allocation limits, but the Council has not yet developed the recommended amendment.

Comment 6: HLA disagrees with the conclusions of the draft EA that the deep-set fishery may have some (albeit very limited) adverse effect on the insular false killer whale stock, because NMFS observers have never recorded an interaction in the very small area in which fishing effort and the designated range of the insular stock currently overlap.

Response: The conclusion that the Hawaii deep-set longline fishery is likely to adversely affect the main Hawaiian Islands insular false killer whale stock is based on NMFS determinations made in the most recent (2014 as supplemented in 2017) biological opinion for the fishery, which we reference in the EA. While we agree that observers have not recently documented interactions in the area where fishing effort and the designated range of the insular stock currently overlap, based on historical data and fishing gear employed, NMFS anticipates that low levels of fishery interactions are still likely to occur on trips within that overlap zone. NMFS applies a proration method described in the 2014 biological opinion that uses fishing effort inside and outside the U.S. EEZ around the MHI to attribute mortality and serious injury, a subset of total take, of false killer whales and unidentified black fish to the pelagic false killer whale stock, the northwestern Hawaiian Islands killer whale stock or the MHI insular false killer whale stock. The proration method also accounts for effort within the small area fishing effort and the insular stock overlap. Because this proration method results in attribution of take to the MHI insular false killer whale stock, NMFS, in the 2014 biological opinion, determined the fishery is likely to adversely affect this stock, but is not likely to jeopardize its continued existence.

Comment 7: Reference to the recent settlement in the shallow-set fishery litigation should clarify that the hard cap limit of 17 loggerhead sea turtles will be effective January 1, 2019, unless or until superseded by a new hard cap limit.

Response: NMFS has made this suggested change in section 3.3.1.2 of the EA.

Comment 8: The EA should clarify that the Southern Exclusion Zone closure is temporary, lasting only to the end of 2018.

Response: NMFS revised the text in EA sections 3.2.3.1, 3.3.2.1, and 4.3.1.1 to reflect the temporary nature of the closure.

Comment 9: As to protected species more broadly, it is more accurate to say that the proposed rule will not result in significant adverse effects to protected species (as opposed to ''large adverse effects.''

Response: NMFS agrees that the action implemented by this final rule will not result in significant impacts to protected species.

Classification

The Regional Administrator, NMFS Pacific Islands Region, determined that this action is necessary for the conservation and management of Pacific Island fishery resources, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. NMFS published the factual basis for the certification in the proposed rule, and we do not repeat it here. NMFS received no comments on this certification; as a result, a regulatory flexibility analysis is not required, and none has been prepared.

Because this rule relieves a restriction, it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). This rule allows U.S. vessels identified in a valid specified fishing agreement to resume fishing in the western and central Pacific Ocean (WCPO) if and when NMFS closes the longline fishery for bigeye tuna. On July 18, 2018, through a separate action, NMFS established the 2018 limit of 3,554 t of bigeye tuna caught by U.S. longline fisheries in the WCPO (83 FR 33851). When NMFS projects that the fishery will reach the limit, NMFS must close the fishery for bigeye tuna in the WCPO. Regulations at 50 CFR 665.819 require NMFS to begin attributing longline caught bigeye tuna to the U.S. territory to which a fishing agreement applies seven days before the date NMFS projects the fishery will reach the WCPO U.S bigeye tuna limit, or upon the effective date of the agreement, whichever is later. Based on longline catch records to date, NMFS projects the fishery will reach the current 3,554 t limit of WCPO bigeye tuna in early November 2018. If the effectiveness of this final rule is delayed past the date the WCPO bigeye tuna limit is reached, NMFS would be required to publish a temporary rule that restricts the Hawaii-based longline fishery for WCPO bigeye tuna until this final rule is effective. After the effective date, NMFS would remove the restrictions for U.S. vessels identified in a valid specified fishing agreement with a U.S. territory. By implementing this rule immediately, it allows the Hawaii longline fishery to continue fishing without the uncertainty or disruption of a potential closure.

This action is exempt from review under E.O. 12866 because it contains no implementing regulations.

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

Dated: October 17, 2018.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2018–23080 Filed 10–22–18; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 205
Tuesday, October 23, 2018

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AMS–SC–18–0069; SC18–989–1 PR]

Raisins Produced From Grapes Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Raisin Administrative Committee (Committee) to increase the assessment rate established for the 2018–19 and subsequent crop years. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by November 23, 2018.

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

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist, or Terry Vawter, Acting Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or Email: *Kathie.Notoro@ams.usda.gov* or *Terry.Vawter@ams.usda.gov*.

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

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 989, as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California. Part 989 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of producers and handlers of raisins operating within the area of production, and a public member.

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

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, California raisin handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate would be applicable to all assessable raisins for the 2018–19 crop year, and continue until amended, suspended, or terminated.

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

The Order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area, and are, in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Therefore, all directly affected persons have an opportunity to participate and provide input.

This proposed rule would increase the assessment rate from $17.00 to $22.00 per ton for the 2018–19 and subsequent crop years. The current rate was published in the **Federal Register** during the 2015–16 crop year to reduce the Committee's monetary reserve to a level that it determined to be appropriate under the Order. The proposed higher rate is a result of a smaller crop forecast due to early spring rain damage to the vines. The 2018–19 crop is anticipated to be 275,000 tons, down from the 300,000 tons recorded the previous crop year.

The Committee met on June 27, 2018 to consider the Committee's projected 2018–19 budget and the Order's continuing assessment rate. The Committee unanimously recommended

an assessment rate of $22.00 per ton of raisins for the 2018–19 crop year. The proposed assessment rate of $22.00 is $5.00 higher than the rate currently in effect. Without the proposed increase, anticipated assessment revenue would not be sufficient to fund the Committee's ongoing administrative functions. The assessment rate increase is necessary to maintain the Committee's activities at current levels and avoid a reduction in the program's effectiveness.

For the 2018–19 crop year, the Committee recommended a budget of expenses totaling $5,189,600. The proposed assessment rate of $22.00 per ton is expected to generate assessment income of approximately $6,050,000, which would be sufficient to fund the recommended 2018–19 expenses.

The major expenditures recommended by the Committee for the 2018–19 crop year include: Salaries and employee-related costs of $1,187,200; administration costs of $440,400; compliance activities of $60,000; research and study costs of $40,000; and promotion related costs of $3,637,000. Subtracted from these expenses is $175,000, which represents reimbursable costs for the shared management of the State marketing raisin program. In comparison, last year's approved budgeted expenditures included: Salaries and employee-related costs of $1,306,150; administration costs of $505,600; compliance activities of $48,000; research and study costs of $35,000; and promotion related costs of $3,577,178.

The increased assessment rate is necessary to cover the decrease in estimated crop size tonnage from 300,000 tons in 2017–18 to 275,000 tons in 2018–19. At the recommended assessment rate of $22.00 per ton, the anticipated assessment income would be $6,050,000. The remaining $860,400 would be added to the authorized reserve.

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

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

Initial Regulatory Flexibility Analysis

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

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

There are approximately 2,600 producers of California raisins and approximately 16 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,500,000. (13 CFR 121.201.)

According to the National Agricultural Statistics Service (NASS), data for the most-recently completed crop year (2017) shows that about 8.03 tons of raisins were produced per acre. The 2017 producer price published by NASS was $1,670 per ton. Thus, the value of raisin production per acre averaged about $13,410.10 (8.03 tons times $1,670 per ton). At that average price, a producer would have to farm nearly 56 acres to receive an annual income from raisins of $750,000 ($750,000 divided by $13,410.10 per acre equals 55.93 acres). According to Committee staff, the majority of California raisin producers farm less than 56 acres. In addition, according to data from the Committee staff, six of the sixteen California raisin handlers have receipts of less than $7,500,000 and may also be considered small entities. Thus, the majority of producers of California raisins may be classified as small entities, while the majority of handlers may be classified as large entities.

This proposed rule would increase the assessment rate collected from handlers for the 2018–19 and subsequent crop years from $17.00 to $22.00 per ton of assessable raisins acquired by handlers.

The Committee reviewed and identified the expenses that would be reasonable and necessary to continue program operations during the 2018–19 crop year. The resulting recommended budget totals $5,189,600 for the 2018–19 crop year, which is an overall decrease from the 2017–18 crop year budget, which totaled $5,296,928.

The quantity of assessable raisins for 2018–19 crop year is estimated to be 275,000 tons. At the recommended assessment rate of $22.00 per ton, the anticipated assessment income would be $6,050,000. Sufficient income should be generated at the higher assessment rate for the Committee to meet its anticipated expenses.

The major expenditures recommended by the Committee for the 2018–19 crop year include: Salaries and employee-related costs of $1,187,200; administration costs of $440,400; compliance activities of $60,000; research and study costs of $40,000; and promotion related costs of $3,637,000.

In comparison, last year's approved budgeted expenditures included: Salaries and employee-related costs of $1,306,150; administration costs of $505,600; compliance activities of $48,000; research and study costs of $35,000; and promotion related costs of $3,577,178. The total budget approved for the 2017–18 crop year was $5,296,928.

Prior to arriving at this budget and assessment rate, the Committee considered information from the Audit Subcommittee which met on June 13, 2018, and discussed alternative spending levels. The recommendation was discussed by the Committee on June 27, 2018, and the Committee ultimately decided that the recommended budget and assessment rate were reasonable and necessary to properly administer the Order.

A review of historical and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2017–18 crop year was approximately $1,670.00 per ton of raisins. Utilizing that price, the estimated crop size of 275,000 tons, and the proposed assessment rate of $22.00 per ton, the estimated assessment revenue for the 2018–19 crop year as a percentage of total producer revenue is approximately 0.013 percent (assessment revenue of $6,050,000 divided by total producer revenue $459,250,000).

This proposed action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers, and some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the Order.

The meetings of the Audit Subcommittee and the Committee were widely publicized throughout the California raisin industry. All interested persons were invited to attend the meetings and encouraged to participate in Committee deliberations on all issues. Like all subcommittee and Committee meetings, the June 13, 2018, and June 27, 2018, meetings, respectively, were public meetings, and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581–0178 Vegetable and Specialty Crops. No changes in those requirements would be necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

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

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

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

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

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 989.347 is revised to read as follows:

§ 989.347 Assessment rate.

On and after August 1, 2018, an assessment rate of $22.00 per ton is established for assessable raisins produced from grapes grown in California.

Dated: October 17, 2018.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2018–23091 Filed 10–22–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0902; Product Identifier 2018–NM–047–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 a new airworthiness directive (AD) for all The Boeing Company Model 787 series airplanes. This proposed AD was prompted by a report of an uncommanded descent and turn that occurred after an inflight switch to the spare flight management function (FMF). This proposed AD would require an inspection of the flight management system (FMS) to determine if certain operational program software (OPS) is installed and installation of new FMS OPS and a software check if necessary. For certain airplanes, this proposed AD would also require concurrent actions. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by December 7, 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–2018–0902.

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–2018–0902; 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: Nelson Sanchez, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3543; email: *nelson.sanchez@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–

2018–0902; Product Identifier 2018–NM–047–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 have received a report of an uncommanded descent and turn that occurred when the spare FMF became the master FMF in flight. When the master FMF and spare FMF are operating normally, the FMF synchronization function sends data from the master to the spare so they will have the same flight data. It was found that an anomaly had prevented this communication for several flights, causing stale flight data to be retained in the spare FMF. In addition, no mechanism is currently in place to detect, remove, and replace stale flight data. This condition, if not addressed, could result in controlled flight into terrain or a mid-air collision.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Requirements Bulletin B787–81205–SB340038–00 RB, Issue 001, dated November 16, 2017. The service information describes procedures for installing FMS OPS Block Point 3B (BP3B) and performing a software check.

We also reviewed Boeing Service Bulletin B787–81205–SB340013–00, Issue 002, dated May 6, 2016. The service information describes procedures for installing FMS OPS Block Point 3 (BP3) and performing a software check. 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 in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information,'' and except for any differences identified as exceptions in the regulatory text of this proposed AD.

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–2018–0902.

Explanation of Requirements Bulletin

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (AD ARC), to enhance the AD system. One enhancement is a process for annotating which steps in the service information are ''required for compliance'' (RC) with an AD. Boeing has implemented this RC concept into Boeing service bulletins.

In an effort to further improve the quality of ADs and AD-related Boeing service information, a joint process improvement initiative was worked between the FAA and Boeing. The initiative resulted in the development of a new process in which the service information more clearly identifies the actions needed to address the unsafe condition in the ''Accomplishment Instructions.'' The new process results in a Boeing Requirements Bulletin, which contains only the actions needed to address the unsafe condition (*i.e.,* only the RC actions).

Differences Between This Proposed AD and the Service Information

The effectivity of Boeing Alert Requirements Bulletin B787–81205–SB340038–00 RB, Issue 001, dated November 16, 2017, is limited to certain Model 787–8 and 787–9 airplanes. However, the applicability of this proposed AD includes all Boeing Model 787 series airplanes. Because the affected software versions are rotable parts, we have determined that these parts could later be installed on airplanes that were initially delivered with acceptable software versions, thereby subjecting those airplanes to the unsafe condition. This difference has been coordinated with Boeing.

Costs of Compliance

We estimate that this proposed AD affects 144 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
Records check or inspection	1 work-hour × $85 per hour = $85	$0	$85	$12,240.
Software installation	4 work-hours × $85 per hour = $340	0	340	Up to $48,960.
Concurrent actions	4 work-hours × $85 per hour = $340	0	340	Up to $48,960.

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 and associated

appliances 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–2018–0902; Product Identifier 2018–NM–047–AD.

(a) Comments Due Date

We must receive comments by December 7, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 787 series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by a report of an uncommanded descent and turn that occurred after an inflight switch to the spare flight management function (FMF), due to the retention of stale flight data in the spare FMF. We are issuing this AD to address the retention of stale flight data in the spare FMF, which, if not addressed, could result in controlled flight into terrain or a mid-air collision.

(f) Compliance

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

(g) Required Actions

(1) For Boeing Model 787 series airplanes that have an original certificate of airworthiness or export certificate of airworthiness issued on or before the effective date of this AD: Within 12 months after the effective date of this AD, inspect the flight management system (FMS) to determine if operational program software (OPS) part number (P/N) HNP5F–AL11–5010 or HNP58–AL11–5006 is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the FMS OPS can be conclusively determined from that review.

(2) If, during any inspection or records review required by paragraph (g)(1) of this AD, FMS OPS P/N HNP5F–AL11–5010 or HNP58–AL11–5006 is found: Within 12 months after the effective date of this AD, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB340038–00 RB, Issue 001, dated November 16, 2017; except where Boeing Alert Requirements Bulletin B787–81205–SB340038–00 RB, Issue 001, dated November 16, 2017, specifies installing 34 FMS OPS Block Point 3B, P/N HNP5E–AL11–5011, this AD requires installing P/N HNP5E–AL11–5011 or later-approved software versions. Later-approved software versions are only those Boeing software versions that are approved as a replacement for the applicable software, and are approved as part of the type design by the FAA or the Boeing Commercial Airplanes Organization Designation Authorization (ODA) after issuance of Boeing Alert Requirements Bulletin B787–81205–SB340038–00 RB, Issue 001, dated November 16, 2017.

Note 1 to paragraph (g) of this AD: Guidance for accomplishing the actions required by paragraph (g) of this AD can be found in Boeing Alert Service Bulletin B787–81205–SB340038–00, Issue 001, dated November 16, 2017, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB340038–00 RB, Issue 001, dated November 16, 2017.

(h) Concurrent Requirements

For airplanes identified in Boeing Service Bulletin B787–81205–SB340013–00, Issue 002, dated May 6, 2016: Prior to or concurrently with the action required by paragraph (g) of this AD, install FMS, Thrust Management System (TMS), and Communication Management Function (CMF) software identified in Boeing Service Bulletin B787–81205–SB340013–00, Issue 002, dated May 6, 2016, and do a software check, in accordance with the Accomplishment Instructions of Boeing Service Bulletin B787–81205–SB340013–00, Issue 002, dated May 6, 2016; except where Boeing Service Bulletin B787–81205–SB340013–00, Issue 002, dated May 6, 2016, specifies installing software, this AD requires installing that software or later-approved software versions. Later-approved software versions are only those Boeing software versions that are approved as a replacement for the applicable software, and are approved as part of the type design by the FAA or the Boeing Commercial Airplanes ODA after issuance of Boeing Service Bulletin B787–81205–SB340013–00, Issue 002, dated May 6, 2016. If the software check fails, before further flight, accomplish corrective actions and repeat the software check and applicable corrective actions until the software check is passed.

(i) Parts Installation Prohibition

As of the effective date of this AD, installation on any airplane of FMS OPS version HNP5F–AL11–5010 or HNP58–AL11–5006 is prohibited, except as required by paragraph (h) of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin B787–81205–SB340013–00, Issue 001, dated December 23, 2015.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(l) Related Information

(1) For more information about this AD, contact Nelson Sanchez, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St.,

Des Moines, WA 98198; phone and fax: 206–231–3543; email: *nelson.sanchez@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 October 10, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–22827 Filed 10–22–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0895; Product Identifier 2018–CE–037–AD]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Pacific Aerospace Limited Model 750XL airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as non-compliant insulation lagging on the refrigerant hoses of the air-conditioning system. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by December 7, 2018.

ADDRESSES: You may send comments 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 proposed AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; phone: +64 7843 6144; fax: +64 843 6134; email: *pacific@aerospace.co.nz;* internet: *www.aerospace.co.nz.* You may review this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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–2018–0895; 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0895; Product Identifier 2018–CE–037–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://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

The Civil Aviation Authority (CAA), which is the aviation authority for New Zealand, has issued AD DCA/750XL/29, dated July 5, 2018 (referred to after this as ''the MCAI''), to correct an unsafe condition for Pacific Aerospace Limited Model 750XL airplanes. The MCAI states:

> The insulation lagging provided by the air-conditioning supplier has been found to be non-compliant and may cause large amounts of smoke in the cabin in the event of a fire. DCA/750XL/29 issued to mandate the instructions in Pacific Aerospace Mandatory Service Bulletin (MSB) PACSB/XL/086 issue 2, dated 6 April 2018, or later approved revision to correct non-compliant insulation lagging on the refrigerant hoses of the air-conditioning system.

You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0895.

Related Service Information Under 1 CFR Part 51

Pacific Aerospace Limited has issued Pacific Aerospace Service Bulletin PACSB/XL/086, Issue 2, dated April 6, 2018. The service information provides instructions for replacing the noncompliant insulation lagging with compliant materials. 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 and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 22 products of U.S. registry. We also estimate that it would take about 32 work-hours per product to comply with the basic requirements of this proposed AD. The average labor

rate is $85 per work-hour. Required parts would cost about $500 per product.

Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $70,840, or $3,220 per product.

According to the manufacturer, some 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 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 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 small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation 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):

Pacific Aerospace Limited: Docket No. FAA–2018–0895; Product Identifier 2018–CE–037–AD.

(a) Comments Due Date

We must receive comments by December 7, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pacific Aerospace Limited Model 750XL airplanes, serial numbers (S/N) up to and including S/N 205, S/N 207, and S/N 208, certificated in any category, with an air-conditioning modification PAC/XL/0409 or PAC/XL/0618 installed.

(d) Subject

Air Transport Association of America (ATA) Code 21: Air Conditioning.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as non-compliant insulation lagging on the refrigerant hoses of the air-conditioning system. We are issuing this AD to replace non-compliant insulation lagging on the refrigerant hoses of the air-conditioning system, which could lead to smoke in the cabin if a fire occurred.

(f) Actions and Compliance

Unless already done, within 150 hours time-in-service after the effective date of this AD, remove existing refrigeration hose lagging, install fire sleeve lagging, and install aluminum tape at the wing spar by following the Accomplishment Instructions in Pacific Aerospace Service Bulletin PACSB/XL/086, Issue 2, dated April 6, 2018.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Small Airplane Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must instead be accomplished using a method approved by the Manager, Small Airplane Standards Branch, FAA; or the Civil Aviation Authority of New Zealand (CAA).

(h) Related Information

Refer to MCAI Civil Aviation Authority (CAA) AD DCA/750XL/29, dated July 5, 2018, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0895. For service information related to this AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; phone: +64 7843 6144; fax: +64 843 6134; email: *pacific@aerospace.co.nz;* internet: *www.aerospace.co.nz.* You may review this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on October 5, 2018.

Melvin J. Johnson,

Aircraft Certification Service, Deputy Director, Policy and Innovation Division, AIR–601.

[FR Doc. 2018–22464 Filed 10–22–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0842; Product Identifier 2018–CE–025–AD]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) AD 2018–04–09 for Pacific Aerospace Limited Model 750XL airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as incorrectly marked and annunciated low oil-pressure indication warnings. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by December 7, 2018.

ADDRESSES: You may send comments 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 proposed AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; telephone: +64 7 843 6144; facsimile: +64 7 843 6134; email: *pacific@aerospace.co.nz;* internet: *www.aerospace.co.nz.* You may review copies of the referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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–2018–0842; 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0842; Product Identifier 2018–CE–025–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://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 issued AD 2018–04–09, Amendment 39–19205 (83 FR 9793, March 8, 2018) (''AD 2018–04–09'') to address an unsafe condition on Pacific Aerospace Limited Model 750XL airplanes. AD 2018–04–09 was based on mandatory continuing airworthiness information (MCAI) originated by the Civil Aviation Authority (CAA), which is the aviation authority for New Zealand.

Since we issued AD 2018–04–09, Pacific Aerospace Limited has revised the airplane flight manual (AFM) (pilot's operating handbook). The CAA revised its previous MCAI and issued CAA AD DCA/750XL/19A, dated April 26, 2018 (referred to after this as ''the MCAI''), to mandate the AFM revisions and also to include an option to modify the oil pressure/temperature indicator. The MCAI states:

> DCA/750XL/19A revised to introduce revision 30 March 2018 for PAL 750XL POH AIR3237, and clarify the AD requirements.

We are proposing this AD to retain the replacement of the pressure switch for the low oil pressure light and the oil pressure/temperature indicator. We are also proposing to require the revised AFM provisions and to clarify that you may modify the oil pressure/temperature indicator instead of replacing the indicator.

You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0842.

Related Service Information Under 1 CFR Part 51

We reviewed Pacific Aerospace Temporary Revision Instruction Letter, dated October 2017, which includes Pacific Aerospace Temporary Revisions XL/POH/00/001, XL/POH/02/001, and XL/POH/03/001; and Pacific Aerospace Revision Instruction Letter, dated March 2018, which includes Pacific Aerospace POH AIR 3237 Revision, dated March 30, 2018, for 750XL airplanes. For the applicable configurations, the service information includes revisions to the AFM that corrects the incorrect instrument markings.

We also reviewed Pacific Aerospace Mandatory Service Bulletin PACSB/XL/088, dated August 11, 2017, which was previously approved for incorporation by reference on April 12, 2018 (83 FR 9793, March 8, 2018), and describes procedures for replacement or modification of the low oil-pressure light, pressure switch, and indicator. 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 of the AD.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or

develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 22 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $500 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $14,740, or $670 per product.

Since the proposed AD requires the same actions as AD 2018–04–09, the costs of compliance remains the same and does not impose any additional costs on U.S. operators.

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 small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation 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 removing Amendment 39–19205 (83 FR 9793, March 8, 2018), and adding the following new airworthiness directive (AD):

Pacific Aerospace Limited: Docket No. FAA–2018–0842; Product Identifier 2018–CE–025–AD.

(a) Comments Due Date

We must receive comments by December 7, 2018.

(b) Affected ADs

This AD replaces AD 2018–04–09, Amendment 39–19205 (83 FR 9793, March 8, 2018) (''AD 2018–04–09'').

(c) Applicability

This AD applies to Pacific Aerospace Limited Model 750XL airplanes, all serial numbers up to 217, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 79: Engine Oil.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as incorrectly marked and annunciated low oil-pressure indication warnings. We are issuing this AD to prevent engine oil pressure from dropping below safe limits, which could cause possible engine damage or failure.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (4) of this AD, as applicable:

(1) *For airplanes with Pacific Aerospace Pilot's Operating Handbook and Civil Aviation Authority of New Zealand Approved Flight Manual AIR 2825 (AIR 2825):* Within the next 30 days after the effective date of this AD, insert Pacific Aerospace Temporary Revisions XL/POH/00/001, XL/POH/02/001 and XL/POH/03/001 into AIR 2825 following the Accomplishment Instructions in Pacific Aerospace Temporary Revision Instruction Letter, dated October 2017.

(2) *For airplanes with Pacific Aerospace Pilot's Operating Handbook and Civil Aviation Authority of New Zealand Approved Flight Manual AIR 3237, Issue 2 (AIR 3237):* Within the next 30 days after the effective date of this AD, remove the affected pages and insert the revised pages, into AIR 3237 following the Accomplishment Instructions in Pacific Aerospace Revision Instruction Letter, dated March 30, 2018.

(3) *For Pacific Aerospace 750XL airplanes up to serial number 217:* Within the next 100 hours time-in-service (TIS) after April 12, 2018 (the effective date of AD 2018–04–09) or within the next 12 months after April 12, 2018 (the effective date of AD 2018–04–09), whichever occurs first, replace or modify the pressure switch for the low oil pressure light by following Part A—Accomplishment Instructions in Pacific Aerospace Mandatory Service Bulletin PACSB/XL/088, dated August 11, 2017 (PACSB/XL/088).

(4) *For Pacific Aerospace 750XL airplanes up to serial number 217 with a part number (P/N) INS 60–8 oil pressure/temperature indicator installed:* Within the next 100 hours TIS after April 12, 2018 (the effective date of AD 2018–04–09) or within the next 12 months after April 12, 2018 (the effective date of AD 2018–04–09), whichever occurs first, replace the oil pressure/temperature indicator with P/N INS 60–15 by following Part B—Accomplishment Instructions in PACSB/XL/088, dated August 11, 2017, except you are not required to return parts to the manufacturer.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.* Before using any approved AMOC on any

airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must instead be accomplished using a method approved by the Manager, Small Airplane Standards Branch, FAA; or the Civil Aviation Authority of New Zealand (CAA).

(i) Related Information

Refer to CAA MCAI AD No. DCA/750XL/19A, dated April 26, 2018, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0842. Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; telephone: +64 7 843 6144; facsimile: +64 7 843 6134; email: *pacific@aerospace.co.nz;* internet: *www.aerospace.co.nz.* You may review copies of the referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on October 5, 2018.

Melvin J. Johnson,

Aircraft Certification Service, Deputy Director, Policy and Innovation Division, AIR–601.

[FR Doc. 2018–22467 Filed 10–22–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740 and 758

[Docket No. 180831812–8812–01]

RIN 0694–XC047

Request for Public Comments Regarding Foreign Disposition of Certain Commodities

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry; request for comments.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comments on the effects and costs that would result if BIS were to amend its regulations to reflect new export authorization requirements regarding electronic waste, including new recordkeeping requirements, reporting requirements, and data elements in the Automated Export System, maintained by the U.S. Census Bureau, to track electronic waste that is exported. Comments from all interested persons are welcome and will help BIS determine the feasibility and cost of implementing a mechanism for tracking and controlling electronic waste exports.

DATES: Comments must be received by BIS no later than December 24, 2018.

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal (*www.regulations.gov*). The regulations.gov ID for this rule is: BIS–2018–0022. All relevant comments (including any personally identifying information) will be made available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, by phone at (202) 482–0092, or by email at *eileen.albanese@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

In recent years, a number of Congressional studies and actions, including the ''Inquiry into Counterfeit Electronic Parts in the Department of Defense Supply Chain'' published by the Committee on Armed Services in the United States Senate (Armed Services Report), as well as the ''Secure E-Waste Export and Recycling Act'' (H.R. 917), have raised concerns regarding counterfeit goods that may enter the United States' military and civilian electronics supply chain. One of the potential sources for these counterfeit goods identified in the Armed Services Report is the unregulated recycling of discarded electronic equipment that has typically been shipped overseas from the United States for disposal.

Although no specific legislation has yet been passed mandating export controls related to electronic waste, prior Congressional studies and actions have prompted the Bureau of Industry and Security (BIS) to seek comments on potential regulatory changes that would limit the export of discarded electronic equipment (electronic waste) by defining the term ''electronic waste'' and prohibiting its export from the United States unless certain conditions are met. If electronic waste does not meet these contemplated conditions, persons could be prohibited from exporting the electronic waste and would need to identify a means of disposal within the United States. If electronic waste meets the contemplated conditions, it would be exempt from the prohibition, potentially eligible to export under a new license exception or other reporting requirement, and the export of these items could require new recordkeeping and tracking requirements.

BIS is seeking public comments on a contemplated new definition of electronic waste, on this potential prohibition on electronic waste exports, and on the basis for an exemption from that prohibition (through criteria for electronic waste exemptions). BIS is also seeking comments on potential regulatory changes, in the form of two reporting approaches identified by BIS that could be used to track the export of electronic waste that is exempt from the prohibition as well as new recordkeeping requirements. In addition, BIS is seeking comments on the potential cost of the regulatory and policy changes associated with a prohibition on the export of electronic waste and the expected effectiveness, if any, of a prohibition to address the issue of counterfeit goods. BIS is also interested in observations from members of the public regarding counterfeit goods and electronic waste exports in the electronics supply chain. Relevant comments from all interested persons are welcome and may help BIS assess the prevalence of counterfeit goods in military and civilian electronic supply chains, the estimated cost to industry to implement these potential regulatory changes, and the effectiveness of the potential strategy to reduce counterfeit goods that enter the military and civilian electronics supply chains.

Potential Criteria Regarding Prohibition and Exemption of Electronic Waste Exports

(1) Definition of ''Electronic Waste''

The definition for electronic waste being considered by BIS would include any of the following used items containing electronic components or fragments thereof, including parts or subcomponents of such items:

(i) Computers and related equipment;

(ii) Data center equipment (including servers, network equipment, firewalls, battery backup systems, and power distribution units);

(iii) Mobile computers (including notebooks, netbooks, tablets, and e-book readers);

(iv) Televisions (including portable televisions and portable DVD players);

(v) Video display devices (including monitors, digital picture frames, and portable video devices);

(vi) Digital imaging devices (including printers, copiers, facsimile machines, image scanners, and multifunction machines);

(vii) Consumer electronics, including digital cameras, projectors, digital audio

players, cellular phones and wireless internet communication devices, audio equipment, video cassette recorders, DVD players, video game systems (including portable systems), video game controllers, signal converter boxes, and cable and satellite receivers; and

(viii) Portable global positioning system navigation.

BIS welcomes comments from the public on the definition, or any alternative construct for a definition of electronic waste.

2) Electronic Waste Exemptions

Electronic waste that would be exempted from the prohibition on export could include consumer appliances that have electronic features, electronic parts of a motor vehicle, tested working used electronics, and recalled electronics. Tested working used electronics would be determined, through testing methodologies, to be fully functional for the purpose for which they were designed or, in the case of multifunction devices, fully functional for at least one of the primary purposes for which the items were designed. This exemption from the potential export prohibition would include refurbished items or items exported for reuse for the purpose for which they were designed. Recalled electronics include items that have been recalled by the manufacturer or are subject to a recall notice issued by the U.S. Consumer Product Safety Commission or other pertinent Federal authority.

Also exempt from the prohibition would be items that are unusable that are exported as feedstock, with no additional mechanical or hand separation required, in a reclamation process to render the electronic components or items recycled consistent with the laws of the foreign country performing the reclamation process. Feedstock means any raw material constituting the principal input for an industrial process.

BIS welcomes comments from the public on criteria regarding exempted electronic waste items. Items that do not meet the criteria for exemption could be subject to a prohibition on export. Persons would need to determine a means of disposal or destruction of non-exempted electronic waste within the United States.

BIS recognizes that other organizations and government agencies may have different criteria or definitions for electronic waste and other relevant terms. BIS seeks comment from the public regarding these terms and any discrepancies and uncertainties that may arise from the definition used in this notice of inquiry.

Potential Changes to the Regulations

(1) Reporting Requirements for the Export of Exempted Electronic Waste

BIS is seeking public comments on two approaches that could be used to track the export of electronic waste that is exempt from the prohibition. The first approach would be to allow electronic waste that is exempt from the prohibition to be exported under a potential new license exception in the Export Administration Regulations (EAR) (15 CFR, subchapter C, parts 730–774). A second approach would be to track and record exempted electronic waste exports through a new data element in the Automated Export System (AES), maintained by the U.S. Census Bureau (Census). BIS recognizes that Census proposed the introduction of a similar data element in the **Federal Register** on March 9, 2016 (81 FR 12423), and ultimately removed the proposed requirement in their final rule published on April 19, 2017 (82 FR 18385), because of public comments and concerns. BIS is nevertheless considering re-introducing an electronic waste indicator in AES as an alternate means to track the export of electronic waste that qualifies for an exemption from the prohibition. BIS welcomes comments and suggestions on other possible approaches and mechanisms that would help the public comply with requirements for the export of electronic waste.

(2) New Recordkeeping Requirements

BIS is seeking comments on new recordkeeping requirements that would apply to exports of exempted electronic waste under a potential new license exception and exports of electronic waste tracked under a potential new AES data element. Exporters would be required to keep documentation on all electronic waste that is exported, including how the electronic waste met the criteria for exemption, and including but not limited to the methodology used to test the items and the test results for each item.

Cost to Industry for Potential Changes to the Regulations and the Prevalence of Counterfeit Items in Electronic Supply Chains

BIS seeks public comments on the costs to exporters of determining eligibility for exemption of items that fall under the definition of electronic waste (including the workability of the testing of used electronics), new recordkeeping requirements for exempted electronic waste, updates to filing systems to reflect regulatory changes (either in the form of a new license exception or an electronic waste indicator in AES), and costs or effects that may arise from the potential changes described in this notice. In addition, BIS seeks comments on the prevalence of counterfeit commodities in the electronic supply chains and whether the changes contemplated in this notice of inquiry would alleviate this problem.

Dated: October 17, 2018.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2018–23044 Filed 10–22–18; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 553

[Docket No. USA–2018–HQ–0001]

RIN 0702–AA80

Army Cemeteries

AGENCY: Department of the Army, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army is proposing revisions regarding the development, operation, maintenance, and administration of the Army Cemeteries. The revisions include changes in management and a name change to the Army National Military Cemeteries. The rule also adopts modifications suggested by the Department of the Army Inspector General and approved by the Secretary of the Army, as well as implementing changes in interment eligibility due to statute.

DATES: Consideration will be given to all comments received by December 24, 2018.

ADDRESSES: You may submit comments, identified by 32 CFR part 553, Docket No. USA–2018–HQ–0001 and/or by Regulatory Information Number (RIN) 0702–AA80 or by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and

docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Randall Keel, Army National Military Cemeteries, 703–614–6314.

SUPPLEMENTARY INFORMATION:

A. Preamble

I. Purpose of the Regulatory Action

a. The Department of the Army (DA) is proposing changes governing Army Cemeteries. Army Cemeteries consist of Arlington National Cemetery, the U.S. Soldiers' and Airmen's Home National Cemetery, twenty-five Army post cemeteries, the West Point Post Cemetery, and the U.S. Disciplinary Barracks Cemetery at Fort Leavenworth. The rule proposes to revise the current part as 'subpart A'(Army National Military Cemeteries), make corrections and additions to subpart A, and add subpart B (Army Post Cemeteries) to further reflect changes in the management structure of the Army National Military Cemeteries created by Army General Orders 2014–74 (*https://armypubs.army.mil/ProductMaps/PubForm/Details.aspx?PUBNO=DAGO+2014–74*) and provisions of a 17 April 2012 Secretary of the Army Decision Memorandum.

b. The legal authorities for this regulatory action include Public Law 93–43, 10 U.S.C. 3013, and 38 U.S.C. 2411. Public Law 93–43, also known as the National Cemeteries Act of 1973, contains a clause in Section 7(b)(2) that exempts the Secretary of the Army from the provisions of the act with respect to those cemeteries that remained under the control of the Army. Title 10 U.S.C. 3013 governs the appointment of the Secretary of the Army and the responsibilities of his position to include the formulation of policies and programs, which apply to Army Cemeteries. Title 38 U.S.C. 2411 contains further descriptions of persons convicted of capital crimes.

II. Summary of the Major Provisions of the Regulatory Action in Question.

Section 553.12, ''Eligibility for interment at Arlington National Cemtery'', clarifies certain dependent eligibility criteria.

Section 553.28, ''Private headstones and markers'', clarifies private headstone and marker approval policies at the Army National Military Cemeteries.

Section 553.36, ''Definitions'', is proposed to provide the definitions of terms used throughout the proposed rule.

Section 553.37, ''Purpose'', is proposed to establish eligibility for interment and inurnment in the twenty-five Army post cemeteries, the U.S. Disciplinary Barracks Cemetery at Fort Leavenworth, KS, and the United States Military Academy Cemetery at West Point, NY.

Section 553.38, ''Statutory authorities'', is proposed to cite relevant sections of United States Code applicable to Army Post Cemeteries including Public Law 93–43,10 U.S.C. 985, 1481, 1482, 3013, and 38 U.S.C. 2411.

Section 553.39, ''Scope and applicability'', is proposed to establish the applicability of this part and not on the applicability of a separate internal Army regulation.

Section 553.40, ''Assignment of gravesites or niches'', is proposed to establish policies regarding the assignment of gravesites or niches.

Section 553.41, ''Proof of Eligibility'', is proposed to establish the requirements for family members to provide necessary documentation needed to verify veterans and their family members are eligible for interment or inurnment in Army post cemeteries.

Section 553.42, ''General rules governing eligibility for interment or inurnment in Army Post Cemeteries'', is proposed to establish the general rules that apply to Army post cemeteries.

Section 553.43, ''Eligibility for interment and inurnment in Army Post Cemeteries'', is proposed for the twenty-five Army cemeteries on various active or former installations which excludes the post cemetery at West Point, NY and the U.S. Disciplinary Barracks Cemetery at Fort Leavenworth, KS.

Section 553.44, ''Eligibility for interment and inurnment in the West Point Post Cemetery'', is proposed for the post cemetery at West Point, NY.

Section 553.45, ''Eligibility for interment in U.S. Disciplinary Barracks Cemetery at Fort Leavenworth'', is proposed for the U.S. Disciplinary Barracks Cemetery at Fort Leavenworth, KS.

Section 553.46, ''Ineligibility for interment, inurnment or memorialization in an Army Post Cemetery'', is proposed to clarify those individuals who are ineligible for interments, inurnments and memorialization. This language is also to clarify the ineligibility of a former spouse whose marriage to the primarily eligible person ended in divorce, to clarify the termination of a spouse's derivative eligibility for interment in a cemetery upon the remarriage of the primarily eligible spouse, to forbid the interment or inurnment of persons convicted of certain crimes, to forbid the interment or inurnment of persons who died on active duty under certain circumstances, and to govern how animal remains unintentionally comingled with human remains will be interred or inurned.

Section 553.47, ''Prohibition of interment, inurnment, or memorialization in an Army Cemetery of persons who have committed certain crimes'', is proposed to be added to implement 10 U.S.C. 985 and 38 U.S.C. 2411, which prohibits the interment, inurnment, or memorialization in any military cemetery of an individual who has been convicted of a federal or state capital crime or who committed a federal or state capital crime but was not convicted of such crime because the person was not available for trial due to death or flight to avoid prosecution. Definitions of the terms *federal capital crime* and *state capital crime* are in § 553.36.

Section 553.48, ''Findings concerning the commission of certain crimes where a person has not been convicted due to death or flight to avoid prosecution'', is proposed to be added to implement 10 U.S.C. 985 and 38 U.S.C. 2411, which prohibit the interment, inurnment, or memorialization in any military cemetery of an individual who has been convicted of a federal or state capital crime, or who committed a federal or state capital crime but was not convicted of such crime because the person was not available for trial due to death or flight to avoid prosecution.

Section 553.49, ''Exceptions to policies for interment or inurnment at Army Post Cemeteries'', is proposed to establish the authorities for granting exceptions and method by which exceptions can be requested.

III. Expected Impact of the Proposed Rule.

DOD expects this rule will reduce burden to the public by saving time to the regulated community—primarily legal assistants and veterans—who now have to currently search for the appropriate eligibility criteria in the current Code of Federal Regulations (CFR), a West Point Regulation, and an outdated Army Regulation. With these revisions all Army cemetery eligibility requirements will be contained in one regulation which is publicly-accessible CFR. DA estimates the consolidation of

eligibility criteria into a single authoritative source will save those referring to the CFR for guidance approximately 30 minutes of research, review, and compliance time. DA cemetery eligibility subject matter experts estimate that 20% of Army cemetery eligibility research involves consultation of the CFR or other Army regulations by legal assistants and 20% consultation by veterans. This results in a total of 40% of Army cemetery eligibility criteria involving consultation of the CFR and the other Army regulations. For purposes of estimating opportunity costs, DA subject matter experts deemed it reasonable to use the average of a legal assistant's mean hourly wage ($25.57/hour), as informed by the 2016 Bureau of Labor and Statistics, and the 2016 U.S. Census Bureau, American Community Survey for 2015 reported annual veteran income of $56,978.50. This annum income for veterans divided by 2,080 annual work hours yields an average veteran hourly wage ($27.39/hour) to approximate an hourly wage for an average eligibility researcher. That rate is $26.48/hour.

As there was an average of 7,600 burials in Army installations in 2016 for which DA cemetery eligibility subject matter experts estimate that 40% involve eligibility research by legal assistants or veterans, the impacted population would be 3,040 (7,600 * 0.40). Therefore, 3,040 impacted burials with an estimated savings of 30 minutes per eligibility research at average researcher hourly rate of $26.48 results in a savings to the public of $40,249.60 (7,600*0.40*30mins*$26.48) annually. DOD welcomes comments on the proposed cost savings associated with this rule.

B. Regulatory Flexibility Act

The Army has determined that the Regulatory Flexibility Act does not apply because the proposed rule does 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. 601–612.

C. Unfunded Mandates Reform Act

The Army has determined that the Unfunded Mandates Reform Act does not apply because the proposed rule does not include a mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or the private sector, of $100 million or more.

D. National Environmental Policy Act

Neither an environmental analysis nor an environmental impact statement under the National Environmental Policy Act is required. This new rule codifies existing policies and does not significantly alter ongoing activities, nor does this rule constitute a new use of the property.

E. Paperwork Reduction Act

The Army has determined that this proposed rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Army has determined that E.O. 12630 does not apply because the proposed rule does not impair private property rights.

G. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the proposed rule has been reviewed by the Office of Management and Budget (OMB).

H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Army has determined that according to the criteria defined in Executive Order 13045, the requirements of that Order do not apply to this proposed rule.

I. Executive Order 13132 (Federalism)

The Army has determined that, according to the criteria defined in Executive Order 13132, the requirements of that Order do not apply to this proposed rule because the rule will not have a substantial effect on the 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.

J. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This proposed rule is expected to be an E.O. 13771 deregulatory action. Details on the estimated cost savings can be found in the Expected Impact of the Proposed Changes section of this rule.

List of Subjects in 32 CFR Part 553

Armed forces, Armed forces reserves, Cemeteries, Government property, Military personnel, Monuments and memorials, Veterans.

For the reasons stated in the preamble, the Department of the Army proposes to amend 32 CFR part 553 to read as follows:

PART 553—ARMY CEMETERIES

■ 1. The authority citation for 32 CFR part 553 is revised to read as follows:

Authority: 10 U.S.C. 985, 1128, 1481, 1482, 3013, 4721–4726; 24 U.S.C. 295a, 412; 38 U.S.C. 2402 note, 2409– 2411, 2413; 40 U.S.C. 9102; and Public Law 93–43, Stat. 87.

■ 2. The heading for part 553 is revised to read as set forth above.

■ 3. Redesignate §§ 553.1 through 553.35 as subpart A.

Subpart A—Army National Military Cemeteries

■ 4. Add subpart A heading to read as set forth above.

§ 553.10 [Amended]

■ 5. § 553.10 is amended by removing ''pursuant to § 553.19(i)'' and adding in its place ''pursuant to § 553.19(h)'' in paragraph (c).

■ 6. § 553.12 is amended by:

■ a. Removing ''; and'' and adding a period in its place in paragraph (b)(4)(v).

■ b. Adding new paragraph (b)(5).

The addition reads as follows:

§ 553.12 Eligibility for interment in Arlington National Cemetery.

* * * * *

(b) * * *

(5) A minor child or permanently dependent child of a primary eligible person who is or will be interred in Arlington National Cemetery.

§ 553.28 [Amended]

■ 7. Amend § 553.28 by removing ''is'' and adding in its place ''may be approved at the discretion of the Executive Director, and are'' in paragraph (a).

■ 8. Add subpart B to read as follows:

Subpart B—Army Post Cemeteries

Sec.

Subpart B—Army Post Cemeteries

§ 553.36 Definitions.

As used in this part, the following terms have these meanings:

Active duty. Full-time duty in the active military service of the United States.

(1) This includes:

(i) Active Reserve component duty performed pursuant to title 10, United States Code.

(ii) Service as a cadet or midshipman currently on the rolls at the U.S. Military, U.S. Naval, U.S. Air Force, or U.S. Coast Guard Academies.

(iii) Active duty for operational support.

(2) This does not include:

(i) Full-time duty performed under title 32, United States Code.

(ii) Active duty for training, initial entry training, annual training duty, or inactive-duty training for members of the Reserve components.

Active duty for operational support (formerly active duty for special work). A tour of active duty for Reserve personnel authorized from military or Reserve personnel appropriations for work on Active component or Reserve component programs. The purpose of active duty for operational support is to provide the necessary skilled manpower assets to support existing or emerging requirements and may include training.

Active duty for training. A category of active duty used to provide structured individual and/or unit training, including on-the-job training, or educational courses to Reserve component members. The active duty for training category includes annual training, initial active duty for training, or any other training duty.

Annual training. The minimum period of active duty for training that Reserve members must perform each year to satisfy the training requirements associated with their Reserve component assignment.

Armed Forces. The U.S. Army, Navy, Marine Corps, Coast Guard, Air Force and their Reserve components.

Army Post Cemeteries. Army Post Cemeteries consist of the 26 cemeteries on active Army installations, on Army reserve complexes, and on former Army installations or inactive posts. Army National Military Cemeteries are not included in Post Cemeteries. The West Point Cemetery is considered an Army Post Cemetery but has separate eligibility standards due to its unique stature. In addition to the 26 Post Cemeteries, there are 3 Apache Native American Prisoner of War Cemeteries on Fort Sill, Oklahoma and 5 World War II German and Italian Prisoner of War Cemeteries on four Army installations which are closed for interments but for which the Army bears responsibilities. Finally, there is the U.S. Army Disciplinary Barracks Cemetery at Fort Leavenworth used for interring the unclaimed remains of those who die while incarcerated by the United States Military. Unlike the other Army cemeteries which honor the Nation's veterans, this cemetery has unique eligibility standards due to the characterization of service of those criminally incarcerated.

Cemetery Responsible Official. An appointed official who serves as the primary point of contact and responsible official for all matters relating to the operation maintenance and administration of an Army cemetery. The appointee must be a U.S. Federal Government Employee, DA Civilian or military member and appointed on orders by the appropriate garrison commander or comparable official.

Child, minor child, permanently dependent child, unmarried adult child.—(1) *Child.* (i) Natural child of a primarily eligible person, born in wedlock;

(ii) Natural child of a female primarily eligible person, born out of wedlock;

(iii) Natural child of a male primarily eligible person, who was born out of wedlock and:

(A) Has been acknowledged in a writing signed by the male primarily eligible person;

(B) Has been judicially determined to be the male primarily eligible person's child;

(C) Whom the male primarily eligible person has been judicially ordered to support; or

(D) Has been otherwise proven, by evidence satisfactory to the Executive Director, to be the child of the male primarily eligible person;

(iv) Adopted child of a primarily eligible person; or

(v) Stepchild who was part of the primarily eligible person's household at the time of death of the individual who is to be interred or inurned.

(2) *Minor child.* A child of the primarily eligible person who

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Is under the age of twenty-one years, or is under the age of twenty-three years and is taking a full-time course of instruction at an educational institution which the U.S. Department of Education acknowledges as an accredited educational institution.

(3) *Permanently dependent child.* A child of the primarily eligible person who:

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Is permanently and fully dependent on one or both of the child's parents because of a physical or mental disability incurred before attaining the age of twenty-one years or before the age of twenty-three years while taking a full-time course of instruction at an educational institution which the U.S. Department of Education acknowledges as an accredited educational institution.

(4) *Unmarried adult child.* A child of the primarily eligible person who

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Has attained the age of twenty-one years.

Close relative. The spouse, parents, adult brothers and sisters, adult natural children, adult stepchildren, and adult adopted children of a decedent.

Derivatively eligible person. Any person who is entitled to interment or inurnment solely based on his or her relationship to a primarily eligible person, as set forth in §§ 553.43 through 553.45.

Executive Director. The person charged by the Secretary of the Army to serve as the functional proponent for policies and procedures pertaining to the administration, operation, and maintenance of all military cemeteries under the jurisdiction of the Army.

Federal capital crime. An offense under Federal law for which a sentence of imprisonment for life or the death penalty may be imposed.

Former spouse. See *spouse.*

Government. The U.S. government and its agencies and instrumentalities.

Inactive-duty training. (1) Duty prescribed for members of the Reserve components by the Secretary concerned under 37 U.S.C. 206 or any other provision of law.

(2) Special additional duties authorized for members of the Reserve components by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

(3) In the case of a member of the Army National Guard or Air National Guard of any State, duty (other than full-time duty) under 32 U.S.C. 316, 502, 503, 504 or 505 or the prior corresponding provisions of law.

(4) This term does not include:

(i) Work or study performed in connection with correspondence courses,

(ii) Attendance at an educational institution in an inactive status, or

(iii) Duty performed as a temporary member of the Coast Guard Reserve.

Interment. The ground burial of casketed or cremated human remains.

Inurnment. The placement of cremated human remains in a niche.

Media. Individuals and agencies that print, broadcast, or gather and transmit news, and their reporters, photographers, and employees.

Minor child. See *child.*

Niche. An above ground space constructed specifically for the placement of cremated human remains.

Parent. A natural parent, a stepparent, a parent by adoption, or a person who for a period of not less than one year stood *in loco parentis,* or was granted legal custody by a court decree or statutory provision.

Permanently dependent child. See *child.*

Person authorized to direct disposition. The person primarily entitled to direct disposition of human remains and who elects to exercise that entitlement. Determination of such entitlement shall be made in accordance with applicable law and regulations.

Personal representative. A person who has legal authority to act on behalf of another through applicable law, order, and regulation.

Primarily eligible person. Any person who is entitled to interment or inurnment based on his or her service as specified in §§ 553.39 through 553.41.

Primary next of kin. (1) In the absence of a valid written document from the decedent identifying the primary next of kin, the order of precedence for designating a decedent's primary next of kin is as follows:

(i) Spouse, even if a minor;

(ii) Children;

(iii) Parents;

(iv) Siblings, to include half-blood and those acquired through adoption;

(v) Grandparents;

(vi) Other next of kin, in order of relationship to the decedent as determined by the laws of the decedent's state of domicile.

(2) Absent a court order or written document from the deceased, the precedence of next of kin with equal relationships to the decedent is governed by seniority (age), older having higher priority than younger. Equal relationship situations include those involving divorced parents of the decedent, children of the decedent, and siblings of the decedent.

Reserve component. The Army Reserve, the Navy Reserve, the Marine Corps Reserve, the Air Force Reserve, the Coast Guard Reserve, the Army National Guard of the United States, and the Air National Guard of the United States.

Spouse, former spouse, subsequently remarried spouse.—(1) *Spouse.* A person who is legally married to another person.

(2) *Former spouse.* A person who was legally married to another person at one time but was not legally married to that person at the time of one of their deaths.

(3) *Subsequently remarried spouse.* A derivatively eligible spouse who was married to the primarily eligible person at the time of the primarily eligible person's death and who subsequently remarried another person.

State capital crime. Under State law, the willful, deliberate, or premeditated unlawful killing of another human being for which a sentence of imprisonment for life or the death penalty may be imposed.

Subsequently recovered remains. Additional remains belonging to the decedent that are recovered or identified after the decedent's interment or inurnment.

Subsequently remarried spouse. See *spouse.*

Subversive activity. Actions constituting subversive activity are those defined in applicable provisions of federal law.

Unmarried adult child. See *child.*

Veteran. A person who served in the U.S. Armed Forces and who was discharged or released under honorable conditions.

§ 553.37 Purpose.

This part specifies the eligibility for interment and inurnment in the twenty-five Army post cemeteries, the West Point Post Cemetery, NY and the U.S. Disciplinary Barracks Cemetery at Fort Leavenworth, KS.

§ 553.38 Statutory authorities.

The statutory authorities for this subpart are Public Law 93–43, 10 U.S.C. 985, 1481, 1482, 3013, and 38 U.S.C. 2411.

§ 553.39 Scope and applicability.

(a) *Scope.* The development, maintenance, administration, and operation of the Army Post Cemeteries are governed by this part, Army Regulation 290–5, and Department of the Army Pamphlet 290–5. The development, maintenance, administration, and operation of Army National Military Cemeteries are not covered by this part.

(b) *Applicability.* This part is applicable to all persons seeking interment or inurnment in Army Post Cemeteries.

§ 553.40 Assignment of gravesites or niches.

(a) All eligible persons will be assigned gravesites or niches without discrimination as to race, color, sex, religion, age, or national origin and without preference to military grade or rank.

(b) Army Cemeteries will enforce a one-gravesite-per-family policy. Once the initial interment or inurnment is made in a gravesite or niche, each additional interment or inurnment of eligible persons must be made in the same gravesite or niche, except as noted in paragraph (f) of this section. This includes multiple primarily eligible persons if they are married to each other.

(c) A gravesite reservation will be honored if the gravesite was properly reserved before May 1, 1975.

(d) The commander responsible for an Army cemetery may cancel a gravesite reservation:

(1) Upon determination that a derivatively eligible spouse has remarried;

(2) Upon determination that the remains of the person having the gravesite reservation have been buried elsewhere or otherwise disposed of;

(3) Upon determination that the person having the gravesite reservation desires to or will be interred in the same gravesite with the predeceased, and doing so is feasible; or

(4) Upon determination that the person having the gravesite reservation would be 120 years of age and there is no record of correspondence with the person having the gravesite reservation within the last two decades.

(e) In cases of reservations where more than one gravesite was reserved (on the basis of the veteran's eligibility at the time the reservation was made), the gravesite reservations will be honored only if the decedents continue to meet the eligibility criteria for interment in Army Post Cemeteries that is in effect at the time of need, and the reserved gravesite is available.

(f) Gravesites or niches shall not be reserved or assigned prior to the time of need.

(g) The selection of gravesites and niches is the responsibility of the Cemetery Responsible Official. The selection of specific gravesites or niches by the family or other representatives of the deceased at any time is prohibited.

§ 553.41 Proof of eligibility.

(a) The personal representative or primary next of kin is responsible for providing appropriate documentation to verify the decedent's eligibility for interment or inurnment.

(b) The personal representative or primary next of kin must certify in writing that the decedent is not prohibited from interment or inurnment under § 553.46 because he or she has not committed or has not been convicted of a Federal or State capital crime or is not a convicted Tier III sex offender.

(c) For service members who die on active duty, a statement of honorable service from a general court martial convening authority is required. If the certificate of honorable service cannot be granted, the service member is ineligible for interment or inurnment pursuant to § 553.46(b).

(d) When applicable, the following documents are required:

(1) Death certificate;

(2) Proof of eligibility as required by paragraphs (e) through (g) of this section;

(3) Any additional documentation to establish the decedent's eligibility (*e.g.,* marriage certificate, birth certificate, waivers, statements that the decedent had no children);

(4) Burial agreement;

(5) A certificate of cremation or notarized statement attesting to the authenticity of the cremated human remains and that 100% of the cremated remains received from the crematorium are present. The Cemetery Responsible Official may, however, allow a portion of the cremated remains to be removed by the crematorium for the sole purpose of producing commemorative items.

(6) Any other document as required by the Cemetery Responsible Official.

(e) The following documents may be used to establish the eligibility of a primarily eligible person:

(1) DD Form 214 (issued by all military services since January 1, 1950), Certificate of Release or Discharge from Active Duty or any other DD Form that shows service or discharge information);

(2) WD AGO 53, 55 or 53–55, Enlisted Record and Report of Separation Honorable Discharge;

(3) WD AGO 53–98, Military Record and Report of Separation Certificate of Service or any other WD AGO/AGO Form that shows service or discharge information;

(4) NGB 22, Report of Separation and Record of Service, Departments of the Army and the Air Force, National Guard Bureau (must indicate a minimum of 20 years total service for pay);

(5) ADJ 545, Discharge Certificate or Army DS ODF, Honorable Discharge from the United States Army;

(6) Bureau of Investigation No. 6, 53 or 118, Discharge Certificate or Bureau of Investigation No. 213, Discharge from U.S. Naval Reserve Force;

(7) VA Adjudication 545, Summary of Record of Active Service or any other VA/GSA/NAR/NA Form that shows service or discharge information;

(8) NAVPERS–553, Notice of Separation from U.S. Naval Service;

(9) NAVMC 70–PD, Honorable Discharge, U.S. Marine Corps or any other NAVPERS/NAVCG/NAVMC/NMC/Form No. 6 U.S.N./Navy (no number) Form that shows service or discharge information; or;

(10) DD Form 1300, Report of Casualty (required in the case of death of an active duty service member).

(f) In addition to the documents otherwise required by this section, a request for interment or inurnment of a subsequently remarried spouse must be accompanied by:

(1) A notarized statement from the new spouse of the subsequently remarried spouse agreeing to the interment or inurnment and relinquishing any claim for interment or inurnment in the same gravesite or niche.

(2) Notarized statement(s) from all of the children from the prior marriage agreeing to the interment or inurnment of their parents in the same gravesite or niche.

(g) In addition to the documents otherwise required by this section, a request for interment or inurnment of a permanently dependent child must be accompanied by:

(1) A notarized statement as to the marital status and degree of dependency of the decedent from an individual with direct knowledge; and

(2) A physician's statement regarding the nature and duration of the physical or mental disability; and

(3) A statement from someone with direct knowledge demonstrating the following factors:

(i) The deceased lived most of his or her adult life with one or either parents, one or both of whom are otherwise eligible for interment;

(ii) The decedent's children, siblings, or other family members, other than the eligible parent, waive any derivative claim to be interred at the Army Post Cemetery in question, in accordance with DA Form 2386 (Agreement for Interment).

(h) Veterans or primary next of kin of deceased veterans may obtain copies of their military records by writing to the National Personnel Records Center, Attention: Military Personnel Records, 1 Archives Drive, St. Louis, Missouri 63138 or using their website: *http://www.archives.gov/veterans/.* All others may request a record by completing and submitting Standard Form 180.

(i) The burden of proving eligibility lies with the party who requests the burial. Commanders of these cemeteries or their Cemetery Responsible Officials will determine whether the submitted evidence is sufficient to support a finding of eligibility.

§ 553.42 General rules governing eligibility for interment or inurnment in Army Post Cemeteries.

(a) Only those persons who meet the criteria of § 553.43 or are granted an exception to policy pursuant to § 553.49 may be interred in the twenty-five Army Post Cemeteries. Only those persons who meet the criteria of § 553.44 or are granted an exception to policy pursuant to § 553.49 may be interred or inurned in the West Point Cemetery. Only those persons who meet the criteria of § 553.45 may be interred in the U.S. Disciplinary Barracks Cemetery.

(b) Derivative eligibility for interment or inurnment may be established only through a decedent's connection to a primarily eligible person and not to another derivatively eligible person.

(c) No veteran is eligible for interment, inurnment, or memorialization in an Army Post Cemetery (except for the U.S. Disciplinary Cemetery) unless the veteran's last period of active duty ended with an honorable discharge. A general discharge under honorable conditions is not sufficient for interment, inurnment or memorialization in an Army Post Cemetery.

(d) For purposes of determining whether a service member has received an honorable discharge, final determinations regarding discharges made in accordance with procedures

established by chapter 79 of title 10, United States Code, will be considered authoritative.

(e) The Executive Director has the authority to act on requests for exceptions to the provisions of the interment, inurnment, and memorialization eligibility policies contained in this part. The Executive Director may delegate this authority on such terms deemed appropriate.

(f) Individuals who do not qualify as a primarily eligible person or a derivatively eligible person, but who are granted an exception to policy to be interred or inurned pursuant to § 553.49 in a new gravesite or niche, will be treated as a primarily eligible person for purposes of this part.

(g) Notwithstanding any other section in this part, memorialization with an individual memorial marker, interment, or inurnment in an Army Post Cemetery is prohibited if there is a gravesite, niche, or individual memorial marker for the decedent in any other Government-operated cemetery or the Government has provided an individual grave marker, individual memorial marker or niche cover for placement in a private cemetery.

§ 553.43 Eligibility for interment and inurnment in Army Post Cemeteries.

Only those who qualify as a primarily eligible person or a derivatively eligible person are eligible for interment and inurnment in Army Post Cemeteries (except for the West Point Cemetery), unless otherwise prohibited as provided for in §§ 553.46 through 553.48, provided that the last period of active duty of the service member or veteran ended with an honorable discharge.

(a) *Primarily eligible persons.* The following are primarily eligible persons for purposes of interment:

(1) Any service member who dies on active duty in the U.S. Armed Forces (except those service members serving on active duty for training only), if the General Courts Martial Convening Authority grants a certificate of honorable service.

(2) Any veteran retired from a Reserve component who served a period of active duty (other than for training), is carried on the official retired list, and is entitled to receive military retired pay.

(3) Any veteran retired from active military service and entitled to receive military retired pay.

(b) *Derivatively eligible persons.* The following individuals are derivatively eligible persons for purposes of interment who may be interred if space is available in the gravesite of the primarily eligible person:

(1) The spouse of a primarily eligible person who is or will be interred in an Army Post Cemetery in the same grave as the spouse. A former spouse of a primarily eligible person is not eligible for interment in an Army Post Cemetery under this section.

(2) A subsequently remarried spouse of a primarily eligible person who is remarried at the time of need, provided that there are no children from any subsequent marriage; that all children from the prior marriage to the primarily eligible person agree to the interment and relinquish any claim for interment in the same gravesite in a notarized statement(s); and that the new spouse, if still living and married to the subsequently remarried spouse, agrees to the interment and relinquishes any claim for interment. The Cemetery Responsible Official may cancel the subsequently remarried spouse's gravesite reservation, if any, consistent with § 553.40, and place the subsequently remarried spouse's remains in the same gravesite as the primarily eligible person.

(3) The spouse of an active duty service member or an eligible veteran, who was:

(i) Lost or buried at sea, temporarily interred overseas due to action by the Government, or officially determined to be missing in action;

(ii) Buried in a U.S. military cemetery maintained by the American Battle Monuments Commission; or

(iii) Interred in Arlington National Cemetery as part of a group burial (the derivatively eligible spouse may not be buried in the group burial gravesite) and the active duty service member does not have a separate individual interment or inurnment location.

(4) A minor child or permanently dependent adult child of a primarily eligible person who is or will be interred in an Army Post Cemetery.

(5) The parents of a minor child or a permanently dependent adult child, whose remains were interred in an Army Post Cemetery based on the eligibility of a parent at the time of the child's death, unless eligibility of a parent is lost through divorce from the primarily eligible parent.

§ 553.44 Eligibility for interment and inurnment in the West Point Post Cemetery.

The following persons are eligible for interment and inurnment in the West Point Post Cemetery, unless otherwise prohibited as provided for in §§ 553.46 through 553.48, provided that the last period of active duty of the service member or veteran ended with an honorable discharge or characterization of honorable service for active duty deaths.

(a) *Primarily eligible persons for interment or inurnment.* The following are primarily eligible persons for purposes of interment or inurnment:

(1) A graduate of the USMA, provided the individual was a U.S. citizen, both as a cadet and at the time of death, and whose military service fulfilled one of the following criteria.

(i) The graduate's service in the Armed Forces of the United States, if any, terminated honorably.

(ii) The graduate's service in wartime in the Armed Forces of a nation that was allied with the United States during the war terminated honorably.

(2) Members of the Armed Forces of the United States, including USMA cadets, who were on active duty at the USMA at time of death and their derivatively eligible person dependents who may have died while the service member was on active duty at the USMA.

(3) Members of the Armed Forces of the United States who were on active duty at the USMA at time of retirement.

(4) Members of the Armed Forces of the United States whose last active duty station prior to retirement for physical disability was the USMA. However, personnel (not otherwise eligible) who are transferred to the Medical Holding Detachment, Keller Army Hospital, for medical boarding or medical disability retirement are not, regardless of length of time, eligible for interment or inurnment in the West Point Cemetery or Columbarium.

(5) Officers appointed as Professors, USMA.

(b) *Derivatively eligible persons.* Those connected to an individual described in paragraph (a) of this section through a relationship described in § 553.43(b). Such individuals may be interred or inurned if space is available in the primarily eligible person's gravesite or niche.

(c) Temporary Restrictions. The Secretary of the Army or his designee may, in special circumstances, impose temporary restrictions on the eligibility standards for the USMA cemetery. If temporary restrictions are imposed, they will be reviewed annually to ensure the special circumstances remain valid for retaining the temporary restrictions.

§ 553.45 Eligibility for interment in U.S. Disciplinary Barracks Cemetery at Fort Leavenworth.

(a) Military prisoners who die while in Military custody and are not claimed by the person authorized to direct disposition of remains or other persons legally authorized to dispose of remains

are permitted to be interred in the U.S. Disciplinary Barracks Cemetery. All decisions for interment in the U.S.D.B. Cemetery will be made by the Executive Director, ANMC.

(b) Other persons approved by the Executive Director.

§ 553.46 Ineligibility for interment, inurnment, or memorialization in an Army Post Cemetery.

The following persons are not eligible for interment, inurnment, or memorialization in an Army Post Cemetery:

(a) A father, mother, brother, sister, or in-law solely on the basis of his or her relationship to a primarily eligible person, even though the individual is:

(1) Dependent on the primarily eligible person for support; or

(2) A member of the primarily eligible person's household.

(b) Except for the U.S. Disciplinary Barracks Cemetery in § 553.45, a person whose last period of service was not characterized as an honorable discharge (*e.g.,* a separation or discharge under general but honorable conditions, other than honorable conditions, a bad conduct discharge, a dishonorable discharge, or a dismissal), regardless of whether the person:

(1) Received any other veterans' benefits; or

(2) Was treated at a Department of Veterans Affairs hospital or died in such a hospital.

(c) A person who has volunteered for service with the U.S. Armed Forces, but has not yet entered on active duty.

(d) A former spouse whose marriage to the primarily eligible person ended in divorce.

(e) A spouse who predeceases the primarily eligible person and is interred or inurned in a location other than an Army Cemetery, and the primarily eligible person remarries.

(f) A divorced spouse of a primarily eligible person or the service-connected parent when the divorced spouse has a child interred or inurned in an Army Cemetery under the child's derivative eligibility.

(g) Otherwise derivatively eligible persons, such as a spouse or minor child, if the primarily eligible person was not or will not be interred or inurned at an Army Cemetery.

(h) A person convicted in a Federal court or by a court-martial of any offense involving subversive activity or an offense described in 18 U.S.C. 1751 (except for military prisoners at the U.S. Disciplinary Barracks Cemetery.)

(i) A service member who dies while on active duty, if the first General Courts Martial Convening Authority in the service member's chain of command determines that there is clear and convincing evidence that the service member engaged in conduct that would have resulted in a separation or discharge not characterized as an honorable discharge (*e.g.,* a separation or discharge under general but honorable conditions, other than honorable conditions, a bad conduct discharge, a dishonorable discharge, or a dismissal) being imposed, but for the death of the service member.

(j) If animal remains are unintentionally commingled with human remains due to a natural disaster, unforeseen accident, act of war or terrorism, violent explosion, or similar incident, and such remains cannot be separated from the remains of an eligible person, then the remains may be interred or inurned with the eligible person, but the identity of the animal remains shall not be inscribed or identified on a niche, marker, headstone, or otherwise.

§ 553.47 Prohibition of interment, inurnment, or memorialization in an Army Cemetery of persons who have committed certain crimes.

(a) *Prohibition.* Notwithstanding §§ 553.43 through 553.45, and pursuant to 10 U.S.C. 985 and 38 U.S.C. 2411, the interment or inurnment in an Army Cemetery of any of the following persons is prohibited:

(1) Any person identified in writing to the Executive Director by the Attorney General of the United States, prior to his or her interment or inurnment as a person who has been convicted of a Federal capital crime and whose conviction is final (other than a person whose sentence was commuted by the President).

(2) Any person identified in writing to the Executive Director by an appropriate State official, prior to his or her interment or inurnment as a person who has been convicted of a State capital crime and whose conviction is final (other than a person whose sentence was commuted by the Governor of the State).

(3) Any person found under procedures specified in § 553.48 to have committed a Federal or State capital crime, but who has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution. Notice from officials is not required for this prohibition to apply.

(4) Any person identified in writing to the Executive Director by the Attorney General of the United States or by an appropriate State official, prior to his or her interment or inurnment as a person who has been convicted of a Federal or State crime causing the person to be a Tier III sex offender for purposes of the Sex Offender Registration and Notification Act, who for such crime is sentenced to a minimum of life imprisonment and whose conviction is final (other than a person whose sentence was commuted by the President or the Governor of a State, as the case may be).

(b) *Notice.* The Executive Director is designated as the Secretary of the Army's representative authorized to receive from the appropriate Federal or State officials notification of conviction of capital crimes referred to in this section.

(c) *Confirmation of person's eligibility.* (1) If notice has not been received, but the Executive Director has reason to believe that the person may have been convicted of a Federal capital crime or a State capital crime, the Executive Director shall seek written confirmation from:

(i) The Attorney General of the United States, with respect to a suspected Federal capital crime; or

(ii) An appropriate State official, with respect to a suspected State capital crime.

(2) The Executive Director will defer the decision on whether to inter, inurn, or memorialize a decedent until a written response is received.

(c) *Due diligence.* Army Post Cemetery Superintendents and Commanders who have cemeteries for which they are responsible will make every effort to determine if the decedent is ineligible in accordance with 10 U.S.C. 985 and 38 U.S.C. 2411. For those determined ineligible due to the provisions of these sections, commanders will submit their determinations in writing to the Executive Director for validation.

§ 553.48 Findings concerning the commission of certain crimes where a person has not been convicted due to death or flight to avoid prosecution.

(a) *Preliminary Inquiry.* If the Executive Director has reason to believe that a decedent may have committed a Federal capital crime or a State capital crime but has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution, the Executive Director shall submit the issue to the Army General Counsel. The Army General Counsel or his or her designee shall initiate a preliminary inquiry seeking information from Federal, State, or local law enforcement officials, or other sources of potentially relevant information.

(b) *Decision after Preliminary Inquiry.* If, after conducting the preliminary inquiry described in paragraph (a) of this section, the Army General Counsel or designee determines that credible evidence exists suggesting the decedent may have committed a Federal capital crime or State capital crime, then further proceedings under this section are warranted to determine whether the decedent committed such crime. Consequently the Army General Counsel or his or her designee shall present the personal representative with a written notification of such preliminary determination and a dated, written notice of the personal representative's procedural options.

(c) *Notice and Procedural Options.* The notice of procedural options shall indicate that, within fifteen days, the personal representative may:

(1) Request a hearing;

(2) Withdraw the request for interment, inurnment, or memorialization; or

(3) Do nothing, in which case the request for interment, inurnment, or memorialization will be considered to have been withdrawn.

(d) *Time computation.* The fifteen-day time period begins on the calendar day immediately following the earlier of the day the notice of procedural options is delivered in person to the personal representative or is sent by U.S. registered mail or, if available, by electronic means to the personal representative. It ends at midnight on the fifteenth day. The period includes weekends and holidays.

(e) *Hearing.* The purpose of the hearing is to allow the personal representative to present additional information regarding whether the decedent committed a Federal capital crime or a State capital crime. In lieu of making a personal appearance at the hearing, the personal representative may submit relevant documents for consideration.

(1) If a hearing is requested, the Army General Counsel or his or her designee shall conduct the hearing.

(2) The hearing shall be conducted in an informal manner.

(3) The rules of evidence shall not apply.

(4) The personal representative and witnesses may appear, at no expense to the Government, and shall, at the discretion of the hearing officer, testify under oath. Oaths must be administered by a person who possesses the legal authority to administer oaths.

(5) The Army General Counsel or designee shall consider any and all relevant information obtained.

(6) The hearing shall be appropriately recorded. Upon request, a copy of the record shall be provided to the personal representative.

(f) *Final Determination.* After considering the hearing officer's report, the opinion of the Army General Counsel or his or her designee, and any additional information submitted by the personal representative, the Secretary of the Army or his or her designee shall determine the decedent's eligibility for interment, inurnment, or memorialization. This determination is final and not appealable.

(1) The determination shall be based on evidence that supports or undermines a conclusion that the decedent's actions satisfied the elements of the crime as established by the law of the jurisdiction in which the decedent would have been prosecuted.

(2) If an affirmative defense is offered by the decedent's personal representative, a determination as to whether the defense was met shall be made according to the law of the jurisdiction in which the decedent would have been prosecuted.

(3) Mitigating evidence shall not be considered.

(4) The opinion of the local, State, or Federal prosecutor as to whether he or she would have brought charges against the decedent had the decedent been available is relevant but not binding and shall be given no more weight than other facts presented.

(g) *Notice of Decision.* The Executive Director shall provide written notification of the Secretary's decision to the personal representative.

§ 553.49 Exceptions to policies for interment or inurnment at Army Post Cemeteries.

(a) Requests for exceptions to policy will be made by the Executive Director, Army National Military Cemeteries.

(b) Eligibility standards for interment and inurnment are based on honorable military service. Exceptions to the eligibility standards are rarely granted. When granted, exceptions are for those persons who have made significant contributions that directly and substantially benefited the U.S. military.

(c) Requests for an exception to the interment or inurnment eligibility policies shall be considered only after the individual's death.

(d) Procedures for submitting requests for exceptions to policy for interment and inurnment will be established by the Executive Director, Army National Military Cemeteries.

Karen L. Durham-Aguilera,

Executive Director.

[FR Doc. 2018–22968 Filed 10–22–18; 8:45 am]

BILLING CODE 5001–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90; DA 18–1013]

Pleading Cycle Established for Petitions for Reconsideration of the Performance Measures Order

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: In this document, the Wireline Competition Bureau establishes a pleading cycle for Petitions for Reconsideration of the Performance Measures Order.

DATES: Oppositions due November 7, 2018 and replies due November 19, 2018.

ADDRESSES: All pleadings are to reference WC Docket No. 10–90. Oppositions and replies may be filed using the Commission's Electronic Comment Filing System (ECFS), or by filing paper copies:

- *Electronic Filers:* Oppositions and replies may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

For detailed instructions for submitting oppositions or replies see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Stephen Wang, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's

document, WC Docket No. 10–90; DA 18–1013, released on October 2, 2018. The full text of this document 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/* and *https://www.fcc.gov/edocs.*

Synopsis

1. On July 6, 2018, the Wireline Competition Bureau, the Wireless Telecommunications Bureau, and the Office of Engineering and Technology adopted the *Performance Measures Order.* For recipients of high-cost universal service support to serve fixed locations, that *Order* established a framework for measuring speed and latency performance, determining a recipient's compliance with its speed and latency obligations, and providing incentives for recipients to meet those obligations.

2. On September 19, 2018, Hughes Network Systems, LLC, Micronesian Telecommunications Corporation, and Viasat, Inc. each filed petitions for reconsideration of the *Order.* Additionally, USTelecom—The Broadband Association, ITTA—The Voice of America's Broadband Providers, and the Wireless internet Service Providers Association jointly filed a petition for reconsideration, while NTCA—The Rural Broadband Association and WTA—Advocates for Rural Broadband filed applications for review.

3. Pursuant to the Commission's rules, oppositions to the petitions for reconsideration must be filed no later than November 7, 2018 and replies to oppositions must be filed no later than November 19, 2018. Oppositions and replies may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington DC 20554.

4. This proceeding shall continue to be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

Ryan Palmer,

Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 2018–23081 Filed 10–22–18; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 13, 15, and 16

[FAR Case 2017–010; Docket No. 2017–0010; Sequence No. 1]

RIN 9000–AN54

Federal Acquisition Regulation: Evaluation Factors for Multiple-Award Contracts; Correction

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

ACTION: Proposed rule; correction.

SUMMARY: On September 24, 2018, DoD, GSA, and NASA published a document proposing to amend the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017. The document heading carried an incorrect docket number. This document carries the correct docket number.

DATES: Comments for the proposed rule published September 24, 2018, at 83 FR 48271, continue to be accepted on or before November 23, 2018, to be considered in the formulation of a final rule.

ADDRESSES: Submit comments in response to FAR Case 2017–010 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''FAR Case 2017–010'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2017–010''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''FAR Case 2017–010'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division, ATTN: Lois Mandell, 1800 F Street NW, 2nd floor, Washington, DC 20405.

Instructions: Please submit comments only and cite ''FAR case 2017–010'' in all correspondence related to this case. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite ''FAR Case 2017–010.''

SUPPLEMENTARY INFORMATION: On September 24, 2018, at 83 FR 48271, DoD, GSA, and NASA published a proposed rule to amend the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017. The document's heading contained the incorrect docket number, ''Docket No. 2017–0009.'' The correct docket number is ''Docket No. 2017–0010'' and is in the heading of this correction.

Dated: October 17, 2018.

William F. Clark,

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

[FR Doc. 2018–23072 Filed 10–22–18; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 180522499–8499–01]

RIN 0648–BH96

List of Fisheries for 2019

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

ACTION: Proposed rule, request for comment.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its proposed List of Fisheries (LOF) for 2019, as required by the Marine Mammal Protection Act (MMPA). The LOF for 2019 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must classify each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of mortality and serious injury of marine mammals that occurs incidental to each fishery. The classification of a fishery on the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan (TRP) requirements.

DATES: Comments must be received by November 23, 2018.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2018–0066, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal:

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0066;*

2. Click the ''Comment Now!'' icon, complete the required fields;

3. Enter or attach your comments.

Mail: Submit written comments to Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

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, etc.), 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).

FOR FURTHER INFORMATION CONTACT: Jaclyn Taylor, Office of Protected Resources, 301–427–8402; Allison Rosner, Greater Atlantic Region, 978–281–9328; Jessica Powell, Southeast Region, 727–824–5312; Dan Lawson, West Coast Region, 562–980–3209; Suzie Teerlink, Alaska Region, 907–586–7240; Kevin Brindock, Pacific Islands Region, 808–725–5146. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

What is the List of Fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental mortality and serious injury of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The classification of a fishery on the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Marine Mammal Stock Assessment Reports (SARs) and other relevant sources, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(1)(C)).

How does NMFS determine in which category a fishery is placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362(20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (OSP). This definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

Tier 1: Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock. If the total annual mortality and serious injury of a marine mammal stock, across all fisheries, is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock will

be placed in Category III (unless those fisheries interact with other stock(s) for which total annual mortality and serious injury is greater than 10 percent of PBR). Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

Tier 2: Tier 2 considers fishery-specific mortality and serious injury for a particular stock.

Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level (*i.e.,* frequent incidental mortality and serious injury of marine mammals).

Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level (*i.e.,* occasional incidental mortality and serious injury of marine mammals).

Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level (*i.e.,* a remote likelihood of or no known incidental mortality and serious injury of marine mammals).

Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086; August 30, 1995).

Because fisheries are classified on a per-stock basis, a fishery may qualify as one category for one marine mammal stock and another category for a different marine mammal stock. A fishery is typically classified on the LOF at its highest level of classification (*e.g.,* a fishery qualifying for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II). Stocks driving a fishery's classification are denoted with a superscript ''1'' in Tables 1 and 2.

Other Criteria That May Be Considered

The tier analysis requires a minimum amount of data, and NMFS does not have sufficient data to perform a tier analysis on certain fisheries. Therefore, NMFS has classified certain fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, or according to factors discussed in the final LOF for 1996 (60 FR 67063; December 28, 1995) and listed in the regulatory definition of a Category II fishery: In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental mortality or serious injury is ''frequent,'' ''occasional,'' or ''remote'' by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fishermen reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries (50 CFR 229.2).

Further, eligible commercial fisheries not specifically identified on the LOF are deemed to be Category II fisheries until the next LOF is published (50 CFR 229.2).

How does NMFS determine which species or stocks are included as incidentally killed or injured in a fishery?

The LOF includes a list of marine mammal species and/or stocks incidentally killed or injured in each commercial fishery. The list of species and/or stocks incidentally killed or injured includes ''serious'' and ''non-serious'' documented injuries as described later in the List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean and the Atlantic Ocean, Gulf of Mexico, and Caribbean sections. To determine which species or stocks are included as incidentally killed or injured in a fishery, NMFS annually reviews the information presented in the current SARs and injury determination reports. The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of interaction with commercial fishing operations. The best available scientific information used in the SARs and reviewed for the 2019 LOF generally summarizes data from 2011–2015. NMFS also reviews other sources of new information, including injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports (*i.e.,* MMPA mortality/injury reports), and anecdotal reports from that time period. In some cases, more recent information may be available and used in the LOF.

For fisheries with observer coverage, species or stocks are generally removed from the list of marine mammal species and/or stocks incidentally killed or injured if no interactions are documented in the five-year timeframe summarized in that year's LOF. For fisheries with no observer coverage and for observed fisheries with evidence indicating that undocumented interactions may be occurring (*e.g.,* fishery has low observer coverage and stranding network data include evidence of fisheries interactions that cannot be attributed to a specific fishery) species and stocks may be retained for longer than five years. For these fisheries, NMFS will review the other sources of information listed above and use its discretion to decide when it is appropriate to remove a species or stock.

Where does NMFS obtain information on the level of observer coverage in a fishery on the LOF?

The best available information on the level of observer coverage and the spatial and temporal distribution of observed marine mammal interactions is presented in the SARs. Data obtained from the observer program and observer coverage levels are important tools in estimating the level of marine mammal mortality and serious injury in commercial fishing operations. Starting with the 2005 SARs, each Pacific and Alaska SAR includes an appendix with detailed descriptions of each Category I and II fishery on the LOF, including the observer coverage in those fisheries. For Atlantic fisheries, this information can be found in the LOF Fishery Fact Sheets. The SARs generally do not provide detailed information on observer coverage in Category III fisheries because, under the MMPA, Category III fisheries are generally not required to accommodate observers aboard vessels due to the remote likelihood of mortality and serious injury of marine mammals. Fishery information presented in the SARs' appendices and other resources referenced during the tier analysis may include: Level of observer coverage; target species; levels of fishing effort; spatial and temporal distribution of fishing effort; characteristics of fishing gear and operations; management and regulations; and interactions with marine mammals. Copies of the SARs are available on the NMFS Office of Protected Resources website at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* Information on observer coverage levels in Category I, II, and III fisheries can be found in the fishery fact sheets on the NMFS Office of Protected Resources' website: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/list-fisheries-summary-tables.* Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's

website: *https://www.fisheries.noaa.gov/national/fisheries-observers/national-observer-program.*

How do I find out if a specific fishery is in Category I, II, or III?

The LOF includes three tables that list all U.S. commercial fisheries by Category. Table 1 lists all of the commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists all of the commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; and Table 3 lists all U.S. authorized commercial fisheries on the high seas. A fourth table, Table 4, lists all commercial fisheries managed under applicable TRPs or take reduction teams (TRT).

Are high seas fisheries included on the LOF?

Beginning with the 2009 LOF, NMFS includes high seas fisheries in Table 3 of the LOF, along with the number of valid High Seas Fishing Compliance Act (HSFCA) permits in each fishery. As of 2004, NMFS issues HSFCA permits only for high seas fisheries analyzed in accordance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The authorized high seas fisheries are broad in scope and encompass multiple specific fisheries identified by gear type. For the purposes of the LOF, the high seas fisheries are subdivided based on gear type (*e.g.,* trawl, longline, purse seine, gillnet, troll, etc.) to provide more detail on composition of effort within these fisheries. Many fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery, but an extension of a fishery operating within U.S. waters (listed in Table 1 or 2). NMFS designates those fisheries in Tables 1, 2, and 3 by a ''*'' after the fishery's name. The number of HSFCA permits listed in Table 3 for the high seas components of these fisheries operating in U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels/participants holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

HSFCA permits are valid for five years, during which time Fishery Management Plans (FMPs) can change. Therefore, some vessels/participants may possess valid HSFCA permits without the ability to fish under the permit because it was issued for a gear type that is no longer authorized under the most current FMP. For this reason, the number of HSFCA permits displayed in Table 3 is likely higher than the actual U.S. fishing effort on the high seas. For more information on how NMFS classifies high seas fisheries on the LOF, see the preamble text in the final 2009 LOF (73 FR 73032; December 1, 2008). Additional information about HSFCA permits can be found at *https://www.fisheries.noaa.gov/node/23351.*

Where can I find specific information on fisheries listed on the LOF?

Starting with the 2010 LOF, NMFS developed summary documents, or fishery fact sheets, for each Category I and II fishery on the LOF. These fishery fact sheets provide the full history of each Category I and II fishery, including: When the fishery was added to the LOF; the basis for the fishery's initial classification; classification changes to the fishery; changes to the list of species and/or stocks incidentally killed or injured in the fishery; fishery gear and methods used; observer coverage levels; fishery management and regulation; and applicable TRPs or TRTs, if any. These fishery fact sheets are updated after each final LOF and can be found under ''How Do I Find Out if a Specific Fishery is in Category I, II, or III?'' on the NMFS Office of Protected Resources' website: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries,* linked to the ''List of Fisheries Summary'' table. NMFS is developing similar fishery fact sheets for each Category III fishery on the LOF. However, due to the large number of Category III fisheries on the LOF and the lack of accessible and detailed information on many of these fisheries, the development of these fishery fact sheets is taking significant time to complete. NMFS began posting Category III fishery fact sheets online with the LOF for 2016.

Am I required to register under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization to lawfully take non-endangered and non-threatened marine mammals incidental to commercial fishing operations. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How do I register and receive my Marine Mammal Authorization Program (MMAP) authorization certificate?

NMFS has integrated the MMPA registration process, implemented through the Marine Mammal Authorization Program (MMAP), with existing state and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Participants in these fisheries are automatically registered under the MMAP and are not required to submit registration or renewal materials.

In the Pacific Islands, West Coast, and Alaska regions, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail or with their state or Federal license or permit at the time of issuance or renewal.

In the West Coast Region, authorization certificates may be obtained from the website *http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/fisheries_interactions.html.*

In the Alaska Region, authorization certificates may be obtained by visiting the National MMAP website *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#obtaining-a-marine-mammal-authorization-certificate.*

In the Greater Atlantic Region, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail automatically at the beginning of each calendar year. Certificates may also be obtained by visiting the Greater Atlantic Regional Office website *https://www.greateratlantic.fisheries.noaa.gov/mmap.*

In the Southeast Region, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail automatically at the beginning of each calendar year. Vessel or gear owners can receive additional authorization certificates by contacting the Southeast Regional Office at 727–209–5952 or by visiting the National MMAP website: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#obtaining-a-marine-mammal-authorization-certificate.*

The authorization certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or

II fisheries, not all state and Federal license or permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries.

Individuals fishing in Category I and II fisheries for which no state or Federal license or permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

How do I renew my registration under the MMAP?

In Alaska, Greater Atlantic, and Southeast regional fisheries, registrations of vessel or gear owners are automatically renewed and participants should receive an authorization certificate by January 1 of each new year. Certificates can also be obtained from the region's website. In Pacific Islands regional fisheries, vessel or gear owners receive an authorization certificate by January 1 for state fisheries and with their permit renewal for Federal fisheries. In West Coast regional fisheries, vessel or gear owners receive authorization either with each renewed state fishing license in Washington and Oregon, with their permit renewal for Federal fisheries (the timing of which varies based on target species), or via U.S. mail. Vessel or gear owners who participate in fisheries in these regions and have not received authorization certificates by January 1 or with renewed fishing licenses must contact the appropriate NMFS Regional Office (see **FOR FURTHER INFORMATION**). Additional authorization certificates are available for printing on the National MMAP website: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#obtaining-a-marine-mammal-authorization-certificate.*

Am I required to submit reports when I kill or injure a marine mammal during the course of commercial fishing operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a fishery listed on the LOF must report to NMFS all incidental mortalities and injuries of marine mammals that occur during commercial fishing operations, regardless of the category in which the fishery is placed (I, II, or III) within 48 hours of the end of the fishing trip or, in the case of non-vessel fisheries, fishing activity. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported.

Mortality/injury reporting forms and instructions for submitting forms to NMFS can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#reporting-a-death-or-injury-of-a-marine-mammal-during-commercial-fishing-operations* or by contacting the appropriate regional office (see **FOR FURTHER INFORMATION**). Forms may be submitted via any of the following means: (1) Online using the electronic form; (2) emailed as an attachment to *nmfs.mireport@noaa.gov;* (3) faxed to the NMFS Office of Protected Resources at 301–713–0376; or (4) mailed to the NMFS Office of Protected Resources (mailing address is provided on the postage-paid form that can be printed from the web address listed above). Reporting requirements and procedures are found in 50 CFR 229.6.

Am I required to take an observer aboard my vessel?

Individuals participating in a Category I or II fishery are required to accommodate an observer aboard their vessel(s) upon request from NMFS. MMPA section 118 states that the Secretary is not required to place an observer on a vessel if the facilities for quartering an observer or performing observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; thereby authorizing the exemption of vessels too small to safely accommodate an observer from this requirement. However, U.S. Atlantic Ocean, Caribbean, or Gulf of Mexico large pelagics longline vessels operating in special areas designated by the Pelagic Longline Take Reduction Plan implementing regulations (50 CFR 229.36(d)) will not be exempted from observer requirements, regardless of their size. Observer requirements are found in 50 CFR 229.7.

Am I required to comply with any marine mammal TRP regulations?

Table 4 provides a list of fisheries affected by TRPs and TRTs. TRP regulations are found at 50 CFR 229.30 through 229.37. A description of each TRT and copies of each TRP can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-take-reduction-plans-and-teams.* It is the responsibility of fishery participants to comply with applicable take reduction regulations.

Where can I find more information about the LOF and the MMAP?

Information regarding the LOF and the MMAP, including registration procedures and forms; current and past LOFs; descriptions of each Category I and II fishery and some Category III fisheries; observer requirements; and marine mammal mortality/injury reporting forms and submittal procedures; may be obtained at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries,* or from any NMFS Regional Office at the addresses listed below:

NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, Attn: Allison Rosner;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Jessica Powell;

NMFS, West Coast Region, Long Beach Office, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Dan Lawson;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802, Attn: Suzie Teerlink; or

NMFS, Pacific Islands Regional Office, Protected Resources Division, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818, Attn: Kevin Brindock.

Sources of Information Reviewed for the 2019 LOF

NMFS reviewed the marine mammal incidental mortality and serious injury information presented in the SARs for all fisheries to determine whether changes in fishery classification are warranted. The SARs are based on the best scientific information available at the time of preparation, including the level of mortality and serious injury of marine mammals that occurs incidental to commercial fishery operations and the PBR levels of marine mammal stocks. The information contained in the SARs is reviewed by regional Scientific Review Groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were created by the MMPA to review the science that informs the SARs, and to advise NMFS on marine mammal population status, trends, and stock structure,

uncertainties in the science, research needs, and other issues.

NMFS also reviewed other sources of new information, including marine mammal stranding and entanglement data, observer program data, fishermen self-reports, reports to the SRGs, conference papers, FMPs, and ESA documents.

The LOF for 2019 was based on, among other things, stranding data; fishermen self-reports; and SARs, primarily the 2017 SARs, which are based on data from 2011–2015. The SARs referenced in this LOF include: 2015 (81 FR 38676; June 14, 2016), 2016 (82 FR 29039; June 27, 2017), and 2017 (83 FR 32093; July 11, 2018). The SARs are available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.*

Request for Public Input on Aquaculture Gear Descriptions

We are soliciting public comment on existing and anticipated gear types used for coastal and offshore aquaculture facilities (shellfish, finfish, and macroalgae) in both state and Federal waters to accurately reflect aquaculture operations on the LOF. The scope and scale of all aquaculture fisheries is expected to grow over the next few decades. We will consider evaluating all aquaculture fisheries based on gear types, rather than species harvested, in a future LOF publication.

Summary of Changes to the LOF for 2019

The following summarizes changes to the LOF for 2019, including the classification of fisheries, fisheries listed, the estimated number of vessels/persons in a particular fishery, and the species and/or stocks that are incidentally killed or injured in a particular fishery. NMFS also makes changes to the estimated number of vessels/persons and list of species and/or stocks killed or injured in certain fisheries. The classifications and definitions of U.S. commercial fisheries for 2019 are identical to those provided in the LOF for 2018 with the changes discussed below. State and regional abbreviations used in the following paragraphs include: AK (Alaska), BSAI (Bering Sea and Aleutian Islands), CA (California), DE (Delaware), FL (Florida), GOA (Gulf of Alaska), GMX (Gulf of Mexico), HI (Hawaii), MA (Massachusetts), ME (Maine), NC (North Carolina), NY (New York), OR (Oregon), RI (Rhode Island), SC (South Carolina), VA (Virginia), WA (Washington), and WNA (Western North Atlantic).

Commercial Fisheries in the Pacific Ocean

Fishery Name and Organizational Changes and Clarification

NMFS proposes to add a superscript ''1'' to the CA/OR/WA stock of short-finned pilot whale to indicate it is driving the Category II classification of the CA thresher shark/swordfish drift gillnet (≥14 inch (in) mesh). The most current estimate of CA/OR/WA short-finned pilot whale mortality and serious injury in the CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh) is 1.2 per year (Carretta *et al.,* 2018b), which is equal to 27 percent of this stock's PBR of 4.5 (Carretta *et al.,* 2018). This level of impact warrants a Category II listing under a Tier 2 analysis (between 1 and 50 percent of PBR), which represents the current listing for this fishery.

Number of Vessels/Persons

NMFS proposes to update the estimated number of vessels/persons in the Pacific Ocean (Table 1) as follows:

Category I

- HI deep-set longline fishery from 143 to 142 vessels/persons

Category II

- HI shallow-set longline fishery from 22 to 13 vessels/person
- American Samoa longline fishery from 18 to 20 vessels/persons

Category III

- American Samoa bottomfish handline from 17 to 1092 vessels/person.

NMFS notes that in previous years, including the LOF for 2018, the estimated number of vessels/persons in the American Samoa bottomfish handline fishery was reported as the number of boats in the fishery. The most recent Annual Stock Assessment and Fishery Evaluation Report for American Samoa (WPRFMC, 2016b) now reports participation in the American Samoa bottomfish handline fishery as the number of fishers in the fishery. This number is calculated by using the average number of fishers per trip multiplied by the number of trips per day, multiplied by the numbers of dates in the calendar year. The total is the combined weekend and weekday stratum estimates. Therefore, the LOF for 2019 reports the estimated number of vessels/persons for American Samoa bottomfish handline fishery as the number of fishers in the fishery.

List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean

NMFS proposes to add the Hawaii stock of rough-toothed dolphin to, and remove the Main Hawaiian Islands (MHI) Insular stock of false killer whale from, the list of stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery. A rough-toothed dolphin was observed dead in this fishery in 2013. No MHI insular stock false killer whale mortalities or injuries have been observed in the most recent five years of data. Annual average estimated mortality and serious injury for rough-toothed dolphins from the Hawaii deep-set longline fishery during 2011 to 2015 was 1.1 per year, which is equal to 0.26 percent of this stock's PBR of 423. During the same time-frame, mortality and serious injury was 0 for the MHI insular stock false killer whale (Carretta *et al.,* 2018). Observer coverage from 2011–2015 for this fishery was 20.3, 20.4, 20.4, 20.8, and 20.6 percent, respectively.

NMFS proposes to add the Western North Pacific and Central North Pacific humpback whale stocks to the list of stocks incidentally killed or injured in the Category II AK Kodiak salmon set gillnet fishery based on a report of a serious injury in 2015. (*Note:* For serious injury and mortality that occurs in an area of stock overlap, all potential stocks are assigned.)

NMFS proposes to add the Eastern Chukchi Sea, Eastern Bering Sea, and Bristol Bay stocks of beluga whale to the list of stocks incidentally killed or injured in the Category II AK Bering Sea, Aleutian Islands pollock trawl fishery based on an observed mortality in 2013. (*Note:* For mortality and serious injury that occurs in an area of stock overlap, all potential stocks are assigned.)

Following consultation with the USFWS, NMFS proposes to add the southern sea otter to the list of species and/or stocks incidentally killed or injured in the Category II CA spiny lobster fishery based on an observed mortality in 2016 (USFWS, 2017).

NMFS proposes to add the Eastern North Pacific stock of blue whales to the list of stocks incidentally killed or injured in the Category II CA Dungeness crab pot fishery based on two observed moralities or serious injuries in 2016 (Carretta *et al.,* 2018a). In addition, NMFS proposes to add a superscript ''1'' to the stock to indicate it is driving the classification of the fishery. Although this information has not yet been included in the blue whale SAR, we calculate that the mean annual take of Eastern North Pacific blue whales in the CA Dungeness crab pot fishery during the most recent 5 years of available data (2012–2016) to be 0.4 per year, which is equal to 17 percent of this stock's PBR

of 2.3 (Carretta *et al.,* 2018). This level of impact warrants a Category II listing under a Tier 2 analysis (between 1 and 50 percent of PBR), which represents the current listing for this fishery.

NMFS proposes to add two stocks to the list of stocks incidentally killed or injured in the Category II AK Bering Sea, Aleutian Islands Pacific cod longline fishery, including: (1) Eastern North Pacific AK resident stock of killer whale, based on an observed mortality in 2012; and (2) AK spotted seal, based on an observed mortality in 2011.

NMFS proposes to add the Western U.S. stock of Steller sea lion to the list of stocks incidentally killed or injured in the Category II AK Gulf of Alaska sablefish longline fishery based on an observed mortality in 2012.

NMFS proposes to add the Central North Pacific stock of humpback whale to the list of stocks incidentally killed or injured in the Category III AK Prince William Sound salmon set gillnet fishery based on stranding reports of two injuries in 2015.

NMFS proposes to add the Western North Pacific stock of humpback whale to the list of stocks incidentally killed or injured in the Category III AK Kodiak salmon purse seine fishery based on a self-report of an injury in 2012.

NMFS proposes to add the Central North Pacific stock of humpback whale to the list of stocks incidentally killed or injured in the Category III AK Southeast salmon purse seine fishery based on a self-reported injury in 2013.

NMFS proposes to add two stocks to the list of stocks incidentally killed or injured in the Category III AK Bering Sea, Aleutian Islands halibut longline fishery, including: (1) The Eastern Pacific stock of northern fur seal, based on three stranding reports of mortalities in 2014; and (2) the North Pacific stock of sperm whale, based on an observed serious injury in 2015.

NMFS proposes to add the AK stock of bearded seal to the list of stocks incidentally killed or injured in the Category III AK Bering Sea, Aleutian Islands Pacific cod trawl fishery based on an observed mortality in 2013.

NMFS proposes to add two stocks to the list of stocks incidentally killed or injured in the Category III AK Gulf of Alaska flatfish trawl fishery, including: (1) The AK stock of harbor seal, based on observed mortalities in 2011 and 2013; and (2) the Western U.S. stock of Steller sea lion, based on an observed mortality in 2015.

NMFS proposes to add the AK stock of harbor seal to the list of stocks incidentally killed or injured in the Category III AK Gulf of Alaska Pacific cod trawl fishery based on an observed mortality in 2010.

NMFS proposes to add the Western U.S. stock of Steller sea lion to the list of stocks incidentally killed or injured in the Category III AK Gulf of Alaska rockfish trawl fishery based on an observed mortality in 2015.

NMFS proposes to add the Western Arctic stock of bowhead whale to the Category III AK Bering Sea, Aleutian Islands crab pot fishery for stranding report of a mortality in 2015.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Fishery Name and Organizational Changes and Clarification

NMFS proposes to remove the superscript ''1'' from the Northern migratory coastal stock of bottlenose dolphin to indicate this stock is no longer driving the Category I classification of the Mid-Atlantic gillnet fishery. The maximum mean annual estimated mortality and serious injury based on observer data (2011–2015) from this fishery is 12.2 animals which is 25.42 percent of PBR (Hayes *et al.,* 2017).

NMFS proposes to remove the superscript ''1'' from the Gulf of Maine stock of harbor porpoise to indicate this stock is no longer driving the Category I classification of the Northeast sink gillnet fishery. The current annual bycatch estimate is 251 animals, which represents 36 percent of this stock's PBR of 706. Observer coverage from 2011–2015 was 19, 15, 11, 18, and 14 percent respectively.

NMFS proposes to add a superscript ''1'' to the Western North Atlantic offshore stock of bottlenose dolphin to indicate it is driving the Category II classification of the Mid-Atlantic bottom trawl fishery. The mean annual estimated mortality and serious injury based on observer data (2010–2014) from this fishery is 19 animals, which is 3.39 percent of PBR (Hayes *et al.,* 2017).

NMFS proposes to add a superscript ''1'' to the Southern migratory coastal stock of bottlenose dolphin to indicate it is driving the Category II classification of the Atlantic blue crab trap/pot fishery. The mean annual estimated mortality and serious injury based on observer data (2011–2015) from this fishery is 0.4 animals, which is 1.74 percent of PBR (Hayes *et al.,* 2018).

NMFS proposes to add a superscript ''1'' to the Gulf of Mexico Northern Coastal stock of bottlenose dolphin to indicate it is driving the Category II classification of the Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery. The mean annual estimated mortality and serious injury based on observer data (2007–2011) from this fishery is 2.3 animals, which is 2.07 percent of PBR (Waring *et al.,* 2016).

Number of Vessels/Persons

NMFS proposes updates to the estimated number of vessels/persons in the Atlantic Ocean, Gulf of Mexico, and Caribbean (Table 2) as follows:

Category I

- Northeast sink gillnet fishery from 4,332 to 3,163 vessels/persons
- Northeast/Mid-Atlantic American lobster trap/pot fishery from 10,163 to 8,485 vessels/persons

Category II

- Mid-Atlantic mid-water trawl (including pair trawl) fishery from 382 to 320 vessels/persons
- Mid-Atlantic bottom trawl fishery from 785 to 633 vessels/persons
- Northeast mid-water trawl (including pair trawl) fishery from 1,087 to 542 vessels/persons

Category III

- Atlantic mixed species trap/pot fishery from 3,436 to 3,332 vessels/persons.

These estimates may represent inflations of actual effort and do not necessarily represent a change in industry effort. However, they represent an estimate of the potential effort for each fishery given the multiple gear types for which state permits may allow. These numbers reflect individuals holding state or Federal permits and do not capture if these individuals maintain multiple permits under the same name and address. Additionally, decreases in the number of potential participants may be an artifact of more efficient techniques used within the database to eliminate duplicate name entries.

If we are able to extract more accurate information on the gear types used by state permit holders in future data requests, the numbers will be corrected to reflect this change. Federal permit information was collected through Federal Vessel Trip Reports and by querying Federal permit databases. State permit information was collected through the Marine Mammal Authorization Program annual registration process.

List of Species and/or Stocks Incidentally Killed or Injured in the Atlantic Ocean, Gulf of Mexico, and Caribbean

NMFS proposes to remove the WNA stock of harp seal from the stocks listed as incidentally killed or injured in the Category I Mid-Atlantic gillnet fishery. The last documented take of harp seal

in this fishery occurred in 2010 when one animal was killed. Observer coverage from 2011–2015 for this fishery was 2, 2, 3, 5, and 6 percent, respectively. Because no additional takes have been documented since 2010, we propose to remove the stock.

NMFS proposes to add the Northern Gulf of Mexico stock of sperm whale to the list of stocks incidentally killed or injured in the Category I Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery. An entangled sperm whale was observed in this fishery in 2015.

NMFS proposes to add the Gulf of Mexico Eastern Coastal stock of bottlenose dolphin to the list of stocks incidentally killed or injured in the Category II Gulf of Mexico gillnet fishery. A dolphin was observed entangled in the net and released alive.

NMFS proposes to remove the WNA stock of gray seal from the stocks listed as incidentally killed or injured in the Category II Mid-Atlantic mid-water trawl fishery. The last documented take of gray seal in this fishery occurred in 2010 when one animal was killed. Observer coverage from 2011–2015 for this fishery was 41, 21, 7, 5, and 3 percent, respectively. Since no additional injuries or mortalities have been documented since 2010, we propose to remove the stock.

NMFS proposes to remove the Canadian east coast stock of minke whale from the stocks listed as incidentally killed or injured in the Category II Northeast mid-water trawl fishery. In 2013, one minke whale was observed dead in the mid-water otter trawl fishery on Georges Bank, however this animal was too decomposed to have been taken in a haul that was only 3 hours long. The annual average estimated minke whale mortality and serious injury incidental to the Northeast mid-water trawl (including pair trawl) fishery during 2011 to 2015 was zero. Observer coverage from 2011–2015 for this fishery was 41, 45, 37, 42, and 8 percent, respectively.

NMFS proposes to add two stocks of bottlenose dolphins to the list of stocks incidentally killed or injured in the Category II Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery, including: (1) Mobile Bay, Bonsecour Bay, based on a self-reported morality in 2016; and (2) Mississippi River Delta, based on an observed mortality in 2017.

NMFS proposes to remove the WNA stock of gray seal from the stocks listed as incidentally killed or injured in the Category III Gulf of Maine Atlantic herring purse seine fishery. There were no observed takes in this fishery from 2011–2015. Observer coverage from 2011–2015 for this fishery was 33, 17, 17, 8, and 8 percent, respectively.

NMFS proposes to remove two stocks of pilot whales from the list of stocks incidentally killed or injured in the Category III U.S. Atlantic tuna purse seine fishery, including: (1) WNA stock of long-finned pilot whale; and (2) WNA stock of short-finned pilot whale. The last observed injuries or mortalities of pilot whales from this fishery was in 1996 (Waring *et al.,* 2015). Since 2015, there have been no active vessels from this fishery permitted to fish, and thus no fishing effort (2017 Stock Assessment and Fishery Evaluation Report for Atlantic Highly Migratory Species).

Commercial Fisheries on the High Seas

Number of Vessels/Persons

NMFS proposes updates to the estimated number of vessels/persons on the High Seas (Table 3) as follows:

Category I

- Atlantic highly migratory species longline fishery from 79 to 67 vessels/persons
- Western Pacific pelagic longline (HI deep-set component) fishery from 143 to 142 vessels/persons

Category II

- Pacific highly migratory species drift gillnet fishery from 4 to 6 vessels/persons
- Atlantic highly migratory species trawl fishery from 2 to 1 vessels/persons
- South Pacific tuna purse seine fishery from 35 to 38 vessels/persons
- South Pacific albacore troll longline fishery from 9 to 11 vessels/persons
- South Pacific tuna longline fishery from 4 to 3 vessels/persons
- Western Pacific pelagic longline (HI shallow-set component) fishery from 22 to 13 vessels/persons
- Pacific highly migratory species handline/pole and line fishery from 42 to 48 vessels/persons
- South Pacific albacore troll handline/pole and line fishery from 11 to 15 vessels/persons
- Western Pacific pelagic handline/pole and line fishery from 5 to 6 vessels/persons
- South Pacific albacore troll troll fishery from 22 to 24 vessels/persons
- South Pacific tuna troll fishery from 4 to 3 vessels/persons

Category III

- Northwest Atlantic bottom longline fishery from 1 to 2 vessels/persons
- Pacific highly migratory species longline fishery from 105 to 128 vessels/persons
- Pacific highly migratory species purse seine fishery from 7 to 10 vessels/persons
- Northwest Atlantic trawl fishery from 2 to 4 vessels/persons
- Pacific highly migratory species troll fishery from 149 to 150 vessels/persons.

List of Species and/or Stocks Incidentally Killed or Injured on the High Seas

NMFS proposes to add three stocks to the list of stocks incidentally killed or injured in the Category II Western Pacific Pelagic (HI shallow-set component) longline fishery. The three stocks are: (1) Hawaii stock of fin whale; (2) Guadalupe fur seal; and (3) unknown stock of Mesoplodon species. One fin whale was observed entangled in the shallow set fishery in 2015, resulting in a non-serious injury (Carretta *et al.,* 2018); one Guadalupe fur seal was observed hooked in the shallow set fishery in 2015, resulting in a non-serious injury (McCracken, 2017); and one Mesoplodont beaked whale was observed entangled in the shallow-set fishery in 2014, and the injury determination could not be determined (McCracken, 2017).

Fisheries Affected by Take Reduction Teams and Plans

NMFS corrects an administrative error in Table 4. Under ''affected fisheries'' for the Pacific Offshore Cetacean Take Reduction Plan, NMFS updates the CA thresher shark/swordfish drift gillnet (≥14 in mesh) from Category I to Category II. This fishery was reclassified in the 2018 LOF (83 FR 5349, February 7, 2018), but the change was not reflected in Table 4.

List of Fisheries

The following tables set forth the list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska), Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean, Table 3 lists commercial fisheries on the high seas, and Table 4 lists fisheries affected by TRPs or TRTs.

In Tables 1 and 2, the estimated number of vessels or persons participating in fisheries operating within U.S. waters is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants, vessels, or persons licensed in a fishery,

then the number from the most recent LOF is used for the estimated number of vessels or persons in the fishery. NMFS acknowledges that, in some cases, these estimates may be inflations of actual effort. For example, the State of Hawaii does not issue fishery-specific licenses, and the number of participants reported in the LOF represents the number of commercial marine license holders who reported using a particular fishing gear type/method at least once in a given year, without considering how many times the gear was used. For these fisheries, effort by a single participant is counted the same whether the fisherman used the gear only once or every day. In the Mid-Atlantic and New England fisheries, the numbers represent the potential effort for each fishery, given the multiple gear types for which several state permits may allow. Changes made to Mid-Atlantic and New England fishery participants will not affect observer coverage or bycatch estimates, as observer coverage and bycatch estimates are based on vessel trip reports and landings data. Tables 1 and 2 serve to provide a description of the fishery's potential effort (state and Federal). If NMFS is able to extract more accurate information on the gear types used by state permit holders in the future, the numbers will be updated to reflect this change. For additional information on fishing effort in fisheries found on Table 1 or 2, contact the relevant regional office (contact information included above in **SUPPLEMENTARY INFORMATION**).

For high seas fisheries, Table 3 lists the number of valid HSFCA permits currently held. Although this likely overestimates the number of active participants in many of these fisheries, the number of valid HSFCA permits is the most reliable data on the potential effort in high seas fisheries at this time. As noted previously in this LOF, the number of HSFCA permits listed in Table 3 for the high seas components of fisheries that also operate within U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

Tables 1, 2, and 3 also list the marine mammal species and/or stocks incidentally killed or injured (seriously or non-seriously) in each fishery based on SARs, injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports (*i.e.,* MMPA reports), and anecdotal reports. The best available scientific information included in these reports is based on data through 2015. This list includes all species and/or stocks known to be killed or injured in a given fishery but also includes species and/or stocks for which there are anecdotal records of a mortality or injury. Additionally, species identified by logbook entries, stranding data, or fishermen self-reports (*i.e.,* MMPA reports) may not be verified. In Tables 1 and 2, NMFS has designated those species/stocks driving a fishery's classification (*i.e.,* the fishery is classified based on mortalities and serious injuries of a marine mammal stock that are greater than or equal to 50 percent (Category I), or greater than 1 percent and less than 50 percent (Category II), of a stock's PBR) by a ''1'' after the stock's name.

In Tables 1 and 2, there are several fisheries classified as Category II that have no recent documented mortalities or serious injuries of marine mammals, or fisheries that did not result in a mortality or serious injury rate greater than 1 percent of a stock's PBR level based on known interactions. NMFS has classified these fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063; December 28, 1995), and according to factors listed in the definition of a ''Category II fishery'' in 50 CFR 229.2 (*i.e.,* fishing techniques, gear types, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fishermen reports, stranding data, and the species and distribution of marine mammals in the area). NMFS has designated those fisheries listed by analogy in Tables 1 and 2 by a ''2'' after the fishery's name.

There are several fisheries in Tables 1, 2, and 3 in which a portion of the fishing vessels cross the exclusive economic zone (EEZ) boundary and therefore operate both within U.S. waters and on the high seas. These fisheries, though listed separately between Table 1 or 2 and Table 3, are considered the same fisheries on either side of the EEZ boundary. NMFS has designated those fisheries in each table by a ''*'' after the fishery's name.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
Category I		
Longline/Set Line Fisheries:		
HI deep-set longline *^	142	Bottlenose dolphin, HI Pelagic; False killer whale, HI Pelagic;[1] False killer whale, NWHI; Humpback whale, Central North Pacific; Kogia *spp.* (Pygmy or dwarf sperm whale), HI; Pygmy killer whale, HI; Risso's dolphin, HI; Rough-toothed dolphin, HI; Short-finned pilot whale, HI; Sperm whale, HI; Striped dolphin, HI.
Category II		
Gillnet Fisheries:		

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
CA thresher shark/swordfish drift gillnet (≥14 in mesh) *	18	Bottlenose dolphin, CA/OR/WA offshore; California sea lion, U.S.; Dall's porpoise, CA/OR/WA; Humpback whale, CA/OR/WA; Long-beaked common dolphin, CA; Minke whale, CA/OR/WA; Northern elephant seal, CA breeding; Northern right-whale dolphin, CA/OR/WA; Pacific white-sided dolphin, CA/OR/WA; Risso's dolphin, CA/OR/WA; Short-beaked common dolphin, CA/OR/WA; Short-finned pilot whale, CA/OR/WA; [1] Sperm Whale, CA/OR/WA.[1]
CA halibut/white seabass and other species set gillnet (>3.5 in mesh)	50	California sea lion, U.S.; Harbor seal, CA; Humpback whale, CA/OR/WA; [1] Long-beaked common dolphin, CA; Northern elephant seal, CA breeding; Sea otter, CA; Short-beaked common dolphin, CA/OR/WA.
CA yellowtail, barracuda, and white seabass drift gillnet (mesh size ≥3.5 in and <14 in); [2].	30	California sea lion, U.S.; Long-beaked common dolphin, CA; Short-beaked common dolphin, CA/OR/WA.
AK Bristol Bay salmon drift gillnet; [2]	1,862	Beluga whale, Bristol Bay; Gray whale, Eastern North Pacific; Harbor seal, Bering Sea; Northern fur seal, Eastern Pacific; Pacific white-sided dolphin, North Pacific; Spotted seal, AK; Steller sea lion, Western U.S.
AK Bristol Bay salmon set gillnet; [2]	979	Beluga whale, Bristol Bay; Gray whale, Eastern North Pacific; Harbor seal, Bering Sea; Northern fur seal, Eastern Pacific; Spotted seal, AK.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA; [1] Harbor seal, GOA; Humpback whale, Central North Pacific; Humpback whale, Western North Pacific; Sea otter, Southwest AK; Steller sea lion, Western U.S.
AK Cook Inlet salmon set gillnet	736	Beluga whale, Cook Inlet; Dall's porpoise, AK; Harbor porpoise, GOA; Harbor seal, GOA; Humpback whale, Central North Pacific; [1] Sea otter, South central AK; Steller sea lion, Western U.S.
AK Cook Inlet salmon drift gillnet	569	Beluga whale, Cook Inlet; Dall's porpoise, AK; Harbor porpoise, GOA; [1] Harbor seal, GOA; Steller sea lion, Western U.S.
AK Peninsula/Aleutian Islands salmon drift gillnet; [2]	162	Dall's porpoise, AK; Harbor porpoise, GOA; Harbor seal, GOA; Northern fur seal, Eastern Pacific.
AK Peninsula/Aleutian Islands salmon set gillnet; [2]	113	Harbor porpoise, Bering Sea; Northern sea otter, Southwest AK; Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	537	Dall's porpoise, AK; Harbor porpoise, GOA; [1] Harbor seal, GOA; Northern fur seal, Eastern Pacific; Pacific white-sided dolphin, North Pacific; Sea otter, South central AK, Steller sea lion, Western U.S.[1]
AK Southeast salmon drift gillnet	474	Dall's porpoise, AK; Harbor porpoise, Southeast AK; Harbor seal, Southeast AK; Humpback whale, Central North Pacific; [1] Pacific white-sided dolphin, North Pacific; Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet; [2]	168	Gray whale, Eastern North Pacific; Harbor Porpoise, Southeastern AK; Harbor seal, Southeast AK; Humpback whale, Central North Pacific (Southeast AK).
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded).	210	Dall's porpoise, CA/OR/WA; Harbor porpoise, inland WA; [1] Harbor seal, WA inland.
Trawl Fisheries:		
AK Bering Sea, Aleutian Islands flatfish trawl	32	Bearded seal, AK; Gray whale, Eastern North Pacific; Harbor porpoise, Bering Sea; Harbor seal, Bering Sea; Humpback whale, Western North Pacific; [1] Killer whale, AK resident; [1] Killer whale, GOA, AI, BS transient; [1] Northern fur seal, Eastern Pacific; Ringed seal, AK; Ribbon seal, AK; Spotted seal, AK; Steller sea lion, Western U.S.; [1] Walrus, AK.
AK Bering Sea, Aleutian Islands pollock trawl	102	Bearded Seal, AK; Beluga whale, Bristol Bay; Beluga whale, Eastern Bering Sea; Beluga whale, Eastern Chukchi Sea; Dall's porpoise, AK, Harbor seal, AK, Humpback whale, Central North Pacific, Humpback whale, Western North Pacific, Northern fur seal, Eastern Pacific, Ribbon seal, AK; Ringed seal, AK; Spotted seal, AK; Steller sea lion, Western U.S.[1]
AK Bering Sea, Aleutian Islands rockfish trawl	17	Killer whale, ENP AK resident; [1] Killer whale, GOA, AI, BS transient.[1]
Pot, Ring Net, and Trap Fisheries:		

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
CA spiny lobster	194	Bottlenose dolphin, CA/OR/WA offshore; Humpback whale, CA/OR/WA;[1] Gray whale, Eastern North Pacific; Southern sea otter.
CA spot prawn pot	25	Gray whale, Eastern North Pacific; Humpback whale, CA/OR/WA.[1]
CA Dungeness crab pot	570	Blue whale, Eastern North Pacific;[1] Gray whale, Eastern North Pacific, Humpback whale, CA/OR/WA.[1]
OR Dungeness crab pot	433	Gray whale, Eastern North Pacific; Humpback whale, CA/OR/WA.[1]
WA/OR/CA sablefish pot	309	Humpback whale, CA/OR/WA.[1]
WA coastal Dungeness crab pot	228	Gray whale, Eastern North Pacific; Humpback whale, CA/OR/WA.[1]
Longline/Set Line Fisheries:		
AK Bering Sea, Aleutian Islands Pacific cod longline	45	Dall's Porpoise, AK; Killer whale, Eastern North Pacific AK resident; Killer whale, GOA, BSAI transient;[1] Northern fur seal, Eastern Pacific; Ringed seal, AK; Spotted seal, AK.
AK Gulf of Alaska sablefish longline	295	Sperm whale, North Pacific; Steller sea lion, Western U.S.
HI shallow-set longline *^	13	Blainville's beaked whale, HI; Bottlenose dolphin, HI Pelagic; False killer whale, HI Pelagic;[1] Humpback whale, Central North Pacific; Risso's dolphin, HI; Rough-toothed dolphin, HI; Short-finned pilot whale, HI; Striped dolphin, HI.
American Samoa longline;[2]	20	Bottlenose dolphin, unknown; Cuvier's beaked whale, unknown; False killer whale, American Samoa; Rough-toothed dolphin, American Samoa; Short-finned pilot whale, unknown.
HI shortline;[2]	9	None documented.
Category III		
Gillnet Fisheries:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet.	1,778	Harbor porpoise, Bering Sea.
AK Prince William Sound salmon set gillnet	29	Harbor seal, GOA; Humpback whale, Central North Pacific; Sea otter, South central AK; Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	920	None documented.
CA set gillnet (mesh size <3.5 in)	296	None documented.
HI inshore gillnet	36	Bottlenose dolphin, HI; Spinner dolphin, HI.
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast.
WA/OR Mainstem Columbia River eulachon gillnet	15	None documented.
WA/OR lower Columbia River (includes tributaries) drift gillnet.	110	California sea lion, U.S.; Harbor seal, OR/WA coast.
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast; Northern elephant seal, CA breeding.
Miscellaneous Net Fisheries:		
AK Cook Inlet salmon purse seine	83	Humpback whale, Central North Pacific.
AK Kodiak salmon purse seine	376	Humpback whale, Central North Pacific; Humpback whale, Western North Pacific.
AK Southeast salmon purse seine	315	Humpback whale, Central North Pacific.
AK Metlakatla salmon purse seine	10	None documented.
AK roe herring and food/bait herring beach seine	10	None documented.
AK roe herring and food/bait herring purse seine	356	None documented.
AK salmon beach seine	31	None documented.
AK salmon purse seine (Prince William Sound, Chignik, Alaska Peninsula).	936	Harbor seal, GOA; Harbor seal, Prince William Sound.
WA/OR sardine purse seine	42	None documented.
CA anchovy, mackerel, sardine purse seine	65	California sea lion, U.S.; Harbor seal, CA.
CA squid purse seine	80	Long-beaked common dolphin, CA; Short-beaked common dolphin, CA/OR/WA.
CA tuna purse seine *	10	None documented.
WA/OR Lower Columbia River salmon seine	10	None documented.
WA/OR herring, smelt, squid purse seine or lampara	130	None documented.
WA salmon purse seine	75	None documented.
WA salmon reef net	11	None documented.
HI lift net	17	None documented.
HI inshore purse seine	<3	None documented.
HI throw net, cast net	23	None documented.
HI seine net	24	None documented.
Dip Net Fisheries:		

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
CA squid dip net	115	None documented.
Marine Aquaculture Fisheries:		
CA marine shellfish aquaculture	unknown	None documented.
CA salmon enhancement rearing pen	>1	None documented.
CA white seabass enhancement net pens	13	California sea lion, U.S.
HI offshore pen culture	2	None documented.
WA salmon net pens	14	California sea lion, U.S.; Harbor seal, WA inland waters.
WA/OR shellfish aquaculture	23	None documented.
Troll Fisheries:		
WA/OR/CA albacore surface hook and line/troll	705	None documented.
CA halibut hook and line/handline	unknown	None documented.
CA white seabass hook and line/handline	unknown	None documented.
AK Bering Sea, Aleutian Islands groundfish hand troll and dinglebar troll.	unknown	None documented.
AK Gulf of Alaska groundfish hand troll and dinglebar troll	unknown	None documented.
AK salmon troll	1,908	Steller sea lion, Eastern U.S.; Steller sea lion, Western U.S.
American Samoa tuna troll	13	None documented.
CA/OR/WA salmon troll	4,300	None documented.
HI troll	2,117	Pantropical spotted dolphin, HI.
HI rod and reel	322	None documented.
Commonwealth of the Northern Mariana Islands tuna troll	40	None documented.
Guam tuna troll	432	None documented.
Longline/Set Line Fisheries:		
AK Bering Sea, Aleutian Islands Greenland turbot longline	4	Killer whale, AK resident.
AK Bering Sea, Aleutian Islands sablefish longline	22	None documented.
AK Bering Sea, Aleutian Islands halibut longline	127	Northern fur seal, Eastern Pacific; Sperm whale, North Pacific.
AK Gulf of Alaska halibut longline	855	None documented.
AK Gulf of Alaska Pacific cod longline	92	Steller sea lion, Western U.S.
AK octopus/squid longline	3	None documented.
AK state-managed waters longline/set line (including sablefish, rockfish, lingcod, and miscellaneous finfish).	464	None documented.
WA/OR/CA groundfish, bottomfish longline/set line	367	Bottlenose dolphin, CA/OR/WA offshore.
WA/OR Pacific halibut longline	350	None documented.
CA pelagic longline	1	None documented in the most recent five years of data.
HI kaka line	15	None documented.
HI vertical line	3	None documented.
Trawl Fisheries:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	13	Bearded seal, AK; Ribbon seal, AK; Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	72	Ringed seal, AK; Steller sea lion, Western U.S.
AK Gulf of Alaska flatfish trawl	36	Harbor seal, AK; Northern elephant seal, North Pacific; Steller sea lion, Western U.S.
AK Gulf of Alaska Pacific cod trawl	55	Harbor seal, AK; Steller sea lion, Western U.S.
AK Gulf of Alaska pollock trawl	67	Dall's porpoise, AK; Fin whale, Northeast Pacific; Northern elephant seal, North Pacific; Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	43	Steller sea lion, Western U.S.
AK Kodiak food/bait herring otter trawl	4	None documented.
AK shrimp otter trawl and beam trawl	38	None documented.
AK state-managed waters of Prince William Sound groundfish trawl.	2	None documented.
CA halibut bottom trawl	47	California sea lion, U.S.; Harbor porpoise, unknown; Harbor seal, unknown; Northern elephant seal, CA breeding; Steller sea lion, unknown.
CA sea cucumber trawl	16	None documented.
WA/OR/CA shrimp trawl	300	None documented.
WA/OR/CA groundfish trawl	160–180	California sea lion, U.S.; Dall's porpoise, CA/OR/WA; Harbor seal, OR/WA coast; Northern fur seal, Eastern Pacific; Pacific white-sided dolphin, CA/OR/WA; Steller sea lion, Eastern U.S.
Pot, Ring Net, and Trap Fisheries:		
AK Bering Sea, Aleutian Islands sablefish pot	6	None documented.
AK Bering Sea, Aleutian Islands Pacific cod pot	59	None documented.
AK Bering Sea, Aleutian Islands crab pot	540	Bowhead whale, Western Arctic; Gray whale, Eastern North Pacific.
AK Gulf of Alaska crab pot	271	None documented.
AK Gulf of Alaska Pacific cod pot	116	Harbor seal, GOA.
AK Gulf of Alaska sablefish pot	248	None documented.
AK Southeast Alaska crab pot	375	Humpback whale, Central North Pacific (Southeast AK).
AK Southeast Alaska shrimp pot	99	Humpback whale, Central North Pacific (Southeast AK).

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
AK shrimp pot, except Southeast	141	None documented.
AK octopus/squid pot	15	None documented.
CA/OR coonstripe shrimp pot	36	Gray whale, Eastern North Pacific; Harbor seal, CA.
CA rock crab pot	124	Gray whale, Eastern North Pacific; Harbor seal, CA.
WA/OR/CA hagfish pot	54	None documented.
WA/OR shrimp pot/trap	254	None documented.
WA Puget Sound Dungeness crab pot/trap	249	None documented.
HI crab trap	5	Humpback whale, Central North Pacific.
HI fish trap	9	None documented.
HI lobster trap	<3	None documented in recent years.
HI shrimp trap	10	None documented.
HI crab net	4	None documented.
HI Kona crab loop net	33	None documented.
Hook-and-Line, Handline, and Jig Fisheries:		
AK Bering Sea, Aleutian Islands groundfish jig	2	None documented.
AK Gulf of Alaska groundfish jig	214	Fin whale, Northeast Pacific.
AK halibut jig	71	None documented.
American Samoa bottomfish	1,092	None documented.
Commonwealth of the Northern Mariana Islands bottomfish.	28	None documented.
Guam bottomfish	>300	None documented.
HI aku boat, pole, and line	<3	None documented.
HI bottomfish handline	578	None documented in recent years.
HI inshore handline	357	None documented.
HI pelagic handline	534	None documented.
WA groundfish, bottomfish jig	679	None documented.
Western Pacific squid jig	0	None documented.
Harpoon Fisheries:		
CA swordfish harpoon	6	None documented.
Pound Net/Weir Fisheries:		
AK herring spawn on kelp pound net	291	None documented.
AK Southeast herring roe/food/bait pound net	2	None documented.
HI bullpen trap	3	None documented.
Bait Pens:		
WA/OR/CA bait pens	13	California sea lion, U.S.
Dredge Fisheries:		
AK scallop dredge	108 (5 AK)	None documented.
Dive, Hand/Mechanical Collection Fisheries:		
AK clam	130	None documented.
AK Dungeness crab	2	None documented.
AK herring spawn on kelp	266	None documented.
AK miscellaneous invertebrates handpick	214	None documented.
HI black coral diving	<3	None documented.
HI fish pond	5	None documented.
HI handpick	46	None documented.
HI lobster diving	19	None documented.
HI spearfishing	163	None documented.
WA/CA kelp	4	None documented.
WA/OR bait shrimp, clam hand, dive, or mechanical collection.	201	None documented.
OR/CA sea urchin, sea cucumber hand, dive, or mechanical collection.	10	None documented.
Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:		
AK/WA/OR/CA commercial passenger fishing vessel	>7,000 (1,006 AK).	Killer whale, unknown; Steller sea lion, Eastern U.S.; Steller sea lion, Western U.S.
Live Finfish/Shellfish Fisheries:		
CA nearshore finfish live trap/hook-and-line	93	None documented.
HI aquarium collecting	90	None documented.

List of Abbreviations and Symbols Used in Table 1: AI—Aleutian Islands; AK—Alaska; BS—Bering Sea; CA—California; ENP—Eastern North Pacific; GOA—Gulf of Alaska; HI—Hawaii; MHI—Main Hawaiian Islands; OR—Oregon; WA—Washington.

[1] Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR.

[2] Fishery classified by analogy.

* Fishery has an associated high seas component listed in Table 3.

^ The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of species and/or stocks killed or injured in high seas component of the fishery, minus species and/or stocks that have geographic ranges exclusively on the high seas. The species and/or stocks are found, and the fishery remains the same, on both sides of the EEZ boundary. Therefore, the EEZ components of these fisheries pose the same risk to marine mammals as the components operating on the high seas.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
Category I		
Gillnet Fisheries:		
Mid-Atlantic gillnet	3,950	Bottlenose dolphin, Northern Migratory coastal; Bottlenose dolphin, Southern Migratory coastal;[1] Bottlenose dolphin, Northern NC estuarine system;[1] Bottlenose dolphin, Southern NC estuarine system;[1] Bottlenose dolphin, WNA offshore; Common dolphin, WNA; Gray seal, WNA; Harbor porpoise, GME/BF; Harbor seal, WNA; Humpback whale, Gulf of Maine; Minke whale, Canadian east coast.
Northeast sink gillnet	3,163	Bottlenose dolphin, WNA offshore; Common dolphin, WNA; Fin whale, WNA; Gray seal, WNA; Harbor porpoise, GME/BF; Harbor seal, WNA; Harp seal, WNA; Hooded seal, WNA; Humpback whale, Gulf of Maine; Long-finned pilot whale, WNA; Minke whale, Canadian east coast; North Atlantic right whale, WNA; Risso's dolphin, WNA; White-sided dolphin, WNA.
Trap/Pot Fisheries:		
Northeast/Mid-Atlantic American lobster trap/pot	8,485	Humpback whale, Gulf of Maine; Minke whale, Canadian east coast; North Atlantic right whale, WNA.[1]
Longline Fisheries:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline*.	280	Atlantic spotted dolphin, Northern GMX; Bottlenose dolphin, Northern GMX oceanic; Bottlenose dolphin, WNA offshore; Common dolphin, WNA; Cuvier's beaked whale, WNA; False killer whale, WNA; Harbor porpoise, GME, BF; Kogia *spp.* (Pygmy or dwarf sperm whale), WNA; Long-finned pilot whale, WNA;[1] Mesoplodon beaked whale, WNA; Minke whale, Canadian East coast; Pantropical spotted dolphin, Northern GMX, Pygmy sperm whale, GMX; Risso's dolphin, Northern GMX; Risso's dolphin, WNA; Rough-toothed dolphin, Northern GMX; Short-finned pilot whale, Northern GMX; Short-finned pilot whale, WNA;[1] Sperm whale, Northern GMX.
Category II		
Gillnet Fisheries:		
Chesapeake Bay inshore gillnet;[2]	248	Bottlenose dolphin, unknown (Northern migratory coastal or Southern migratory coastal).
Gulf of Mexico gillnet;[2]	248	Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, GMX bay, sound, and estuarine; Bottlenose dolphin, Northern GMX coastal; Bottlenose dolphin, Western GMX coastal.
NC inshore gillnet	2,850	Bottlenose dolphin, Northern NC estuarine system;[1] Bottlenose dolphin, Southern NC estuarine system.[1]
Northeast anchored float gillnet;[2]	852	Harbor seal, WNA; Humpback whale, Gulf of Maine; White-sided dolphin, WNA.
Northeast drift gillnet;[2]	1,036	None documented.
Southeast Atlantic gillnet;[2]	273	Bottlenose dolphin, Central FL coastal; Bottlenose dolphin, Northern FL coastal; Bottlenose dolphin, SC/GA coastal; Bottlenose dolphin, Southern migratory coastal.
Southeastern U.S. Atlantic shark gillnet	23	Bottlenose dolphin, unknown (Central FL, Northern FL, SC/GA coastal, or Southern migratory coastal); North Atlantic right whale, WNA.
Trawl Fisheries:		
Mid-Atlantic mid-water trawl (including pair trawl)	320	Harbor seal, WNA.
Mid-Atlantic bottom trawl	633	Bottlenose dolphin, WNA offshore;[1] Common dolphin, WNA;[1] Gray seal, WNA; Harbor seal, WNA; Risso's dolphin, WNA;[1] White-sided dolphin, WNA.
Northeast mid-water trawl (including pair trawl)	542	Common dolphin, WNA; Gray seal, WNA; Harbor seal, WNA; Long-finned pilot whale, WNA.[1]
Northeast bottom trawl	2,238	Bottlenose dolphin, WNA offshore; Common dolphin, WNA; Gray seal, WNA; Harbor porpoise, GME/BF; Harbor seal, WNA; Harp seal, WNA; Long-finned pilot whale, WNA; Risso's dolphin, WNA; White-sided dolphin, WNA.[1]

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	4,950	Atlantic spotted dolphin, GMX continental and oceanic; Bottlenose dolphin, Charleston estuarine system; Bottlenose dolphin, Eastern GMX coastal;[1] Bottlenose dolphin, GMX bay, sound, estuarine;[1] Bottlenose dolphin, GMX continental shelf; Bottlenose dolphin, Mississippi River Delta; Bottlenose dolphin, Mobile Bay, Bonsecour Bay; Bottlenose dolphin, Northern GMX coastal;[1] Bottlenose dolphin, SC/GA coastal;[1] Bottlenose dolphin, Southern migratory coastal; Bottlenose dolphin, Western GMX coastal;[1] West Indian manatee, Florida.
Trap/Pot Fisheries:		
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot.[2]	1,384	Bottlenose dolphin, Biscayne Bay estuarine; Bottlenose dolphin, Central FL coastal; Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, FL Bay; Bottlenose dolphin, GMX bay, sound, estuarine (FL west coast portion); Bottlenose dolphin, Indian River Lagoon estuarine system; Bottlenose dolphin, Jacksonville estuarine system; Bottlenose dolphin, Northern GMX coastal.
Atlantic mixed species trap/pot;[2]	3,332	Fin whale, WNA; Humpback whale, Gulf of Maine.
Atlantic blue crab trap/pot	7,714	Bottlenose dolphin, Central FL coastal; Bottlenose dolphin, Central GA estuarine system; Bottlenose dolphin, Charleston estuarine system;[1] Bottlenose dolphin, Indian River Lagoon estuarine system; Bottlenose dolphin, Jacksonville estuarine system; Bottlenose dolphin, Northern FL coastal;[1] Bottlenose dolphin, Northern GA/Southern SC estuarine system; Bottlenose dolphin, Northern Migratory coastal; Bottlenose dolphin, Northern NC estuarine system;[1] Bottlenose dolphin, Northern SC estuarine system; Bottlenose dolphin, SC/GA coastal; Bottlenose dolphin, Southern GA estuarine system; Bottlenose dolphin, Southern Migratory coastal;[1] Bottlenose dolphin, Southern NC estuarine system; West Indian manatee, FL.
Purse Seine Fisheries:		
Gulf of Mexico menhaden purse seine	40–42	Bottlenose dolphin, GMX bay, sound, estuarine; Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau; Bottlenose dolphin, Northern GMX coastal;[1] Bottlenose dolphin, Western GMX coastal.[1]
Mid-Atlantic menhaden purse seine.[2]	19	Bottlenose dolphin, Northern Migratory coastal; Bottlenose dolphin, Southern Migratory coastal.
Haul/Beach Seine Fisheries:		
Mid-Atlantic haul/beach seine	359	Bottlenose dolphin, Northern Migratory coastal;[1] Bottlenose dolphin, Northern NC estuarine system;[1] Bottlenose dolphin, Southern Migratory coastal.[1]
NC long haul seine	30	Bottlenose dolphin, Northern NC estuarine system;[1] Bottlenose dolphin, Southern NC estuarine system.
Stop Net Fisheries:		
NC roe mullet stop net	1	Bottlenose dolphin, Northern NC estuarine system; Bottlenose dolphin, unknown (Southern migratory coastal or Southern NC estuarine system).
Pound Net Fisheries:		
VA pound net	26	Bottlenose dolphin, Northern migratory coastal; Bottlenose dolphin, Northern NC estuarine system; Bottlenose dolphin, Southern Migratory coastal.[1]
Category III		
Gillnet Fisheries:		
Caribbean gillnet	>991	None documented in the most recent five years of data.
DE River inshore gillnet	unknown	None documented in the most recent five years of data.
Long Island Sound inshore gillnet	unknown	None documented in the most recent five years of data.
RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet.	unknown	None documented in the most recent five years of data.
Southeast Atlantic inshore gillnet	unknown	Bottlenose dolphin, Northern SC estuarine system.
Trawl Fisheries:		
Atlantic shellfish bottom trawl	>58	None documented.
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX oceanic; Bottlenose dolphin, Northern GMX continental shelf.
Gulf of Mexico mixed species trawl	20	None documented.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
GA cannonball jellyfish trawl	1	Bottlenose dolphin, SC/GA coastal.
Marine Aquaculture Fisheries:		
Finfish aquaculture	48	Harbor seal, WNA.
Shellfish aquaculture	unknown	None documented.
Purse Seine Fisheries:		
Gulf of Maine Atlantic herring purse seine	>7	Harbor seal, WNA.
Gulf of Maine menhaden purse seine	>2	None documented.
FL West Coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal.
U.S. Atlantic tuna purse seine *	5	None documented in most recent five years of data.
Longline/Hook-and-Line Fisheries:		
Northeast/Mid-Atlantic bottom longline/hook-and-line	>1,207	None documented.
Gulf of Maine, U.S. Mid-Atlantic tuna, shark, swordfish hook-and-line/harpoon.	2,846	Bottlenose dolphin, WNA offshore; Humpback whale, Gulf of Maine.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/ hook-and-line.	>5,000	Bottlenose dolphin, GMX continental shelf.
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line.	39	Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, Northern GMX continental shelf.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon.	680	None documented.
U.S. Atlantic, Gulf of Mexico trotline	unknown	None documented.
Trap/Pot Fisheries:		
Caribbean mixed species trap/pot	>501	None documented.
Caribbean spiny lobster trap/pot	>197	None documented.
FL spiny lobster trap/pot	1,268	Bottlenose dolphin, Biscayne Bay estuarine; Bottlenose dolphin, Central FL coastal; Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, FL Bay estuarine; Bottlenose dolphin, FL Keys.
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Barataria Bay; Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, GMX bay, sound, estuarine; Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau; Bottlenose dolphin, Northern GMX coastal, Bottlenose dolphin, Western GMX coastal; West Indian manatee, FL.
Gulf of Mexico mixed species trap/pot	unknown	None documented.
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot.	10	None documented.
U.S. Mid-Atlantic eel trap/pot	unknown	None documented.
Stop Seine/Weir/Pound Net/Floating Trap/Fyke Net Fisheries:		
Gulf of Maine herring and Atlantic mackerel stop seine/ weir.	>1	Harbor porpoise, GME/BF; Harbor seal, WNA; Minke whale, Canadian east coast; Atlantic white-sided dolphin, WNA.
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented.
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net).	unknown	Bottlenose dolphin, Northern NC estuarine system.
RI floating trap	9	None documented.
Northeast and Mid-Atlantic fyke net	unknown	None documented.
Dredge Fisheries:		
Gulf of Maine sea urchin dredge	unknown	None documented.
Gulf of Maine mussel dredge	unknown	None documented.
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	>403	None documented.
Mid-Atlantic blue crab dredge	unknown	None documented.
Mid-Atlantic soft-shell clam dredge	unknown	None documented.
Mid-Atlantic whelk dredge	unknown	None documented.
U.S. Mid-Atlantic/Gulf of Mexico oyster dredge	7,000	None documented.
New England and Mid-Atlantic offshore surf clam/quahog dredge.	unknown	None documented.
Haul/Beach Seine Fisheries:		
Caribbean haul/beach seine	15	None documented in the most recent five years of data.
Gulf of Mexico haul/beach seine	unknown	None documented.
Southeastern U.S. Atlantic haul/beach seine	25	None documented.
Dive, Hand/Mechanical Collection Fisheries:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented.
Gulf of Maine urchin dive, hand/mechanical collection	unknown	None documented.
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net.	unknown	None documented.
Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:		

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	Bottlenose dolphin, Barataria Bay estuarine system; Bottlenose dolphin, Biscayne Bay estuarine; Bottlenose dolphin, Central FL coastal; Bottlenose dolphin, Choctawhatchee Bay; Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, FL Bay; Bottlenose dolphin, GMX bay, sound, estuarine; Bottlenose dolphin, Indian River Lagoon estuarine system; Bottlenose dolphin, Jacksonville estuarine system; Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau; Bottlenose dolphin, Northern FL coastal; Bottlenose dolphin, Northern GA/Southern SC estuarine; Bottlenose dolphin, Northern GMX coastal; Bottlenose dolphin, Northern migratory coastal; Bottlenose dolphin, Northern NC estuarine; Bottlenose dolphin, Southern migratory coastal; Bottlenose dolphin, Southern NC estuarine system; Bottlenose dolphin, SC/GA coastal; Bottlenose dolphin, Western GMX coastal; Short-finned pilot whale, WNA.

List of Abbreviations and Symbols Used in Table 2: DE—Delaware; FL—Florida; GA—Georgia; GME/BF—Gulf of Maine/Bay of Fundy; GMX—Gulf of Mexico; MA—Massachusetts; NC—North Carolina; NY—New York; RI—Rhode Island; SC—South Carolina; VA—Virginia; WNA—Western North Atlantic.

[1] Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR.

[2] Fishery classified by analogy.

* Fishery has an associated high seas component listed in Table 3.

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS

Fishery description	Number of HSFCA permits	Marine mammal species and/or stocks incidentally killed or injured
Category I		
Longline Fisheries:		
Atlantic Highly Migratory Species*	67	Atlantic spotted dolphin, WNA; Bottlenose dolphin, Northern GMX oceanic; Bottlenose dolphin, WNA offshore; Common dolphin, WNA; Cuvier's beaked whale, WNA; False killer whale, WNA; Killer whale, GMX oceanic; Kogia *spp.* whale (Pygmy or dwarf sperm whale), WNA; Long-finned pilot whale, WNA; Mesoplodon beaked whale, WNA; Minke whale, Canadian East coast; Pantropical spotted dolphin, WNA; Risso's dolphin, GMX; Risso's dolphin, WNA; Short-finned pilot whale, WNA.
Western Pacific Pelagic (HI Deep-set component)*^	142	Bottlenose dolphin, HI Pelagic; False killer whale, HI Pelagic; Humpback whale, Central North Pacific; Kogia *spp.* (Pygmy or dwarf sperm whale), HI; Pygmy killer whale, HI; Risso's dolphin; HI; Short-finned pilot whale, HI; Sperm whale, HI; Striped dolphin, HI.
Category II		
Drift Gillnet Fisheries:		
Pacific Highly Migratory Species*^	6	Long-beaked common dolphin, CA; Humpback whale, CA/OR/WA; Northern right-whale dolphin, CA/OR/WA; Pacific white-sided dolphin, CA/OR/WA; Risso's dolphin, CA/OR/WA; Short-beaked common dolphin, CA/OR/WA.
Trawl Fisheries:		
Atlantic Highly Migratory Species**	1	No information.
CCAMLR	0	Antarctic fur seal.
Purse Seine Fisheries:		
South Pacific Tuna Fisheries	38	No information.
Western Pacific Pelagic	1	No information.
Longline Fisheries:		
CCAMLR	0	None documented.
South Pacific Albacore Troll	11	No information.
South Pacific Tuna Fisheries**	3	No information.

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS—Continued

Fishery description	Number of HSFCA permits	Marine mammal species and/or stocks incidentally killed or injured
Western Pacific Pelagic (HI Shallow-set component) *^	13	Blainville's beaked whale, HI; Bottlenose dolphin, HI Pelagic; False killer whale; HI Pelagic; Fin whale, HI; Guadalupe fur seal; Humpback whale, Central North Pacific; Mesoplodon sp., unknown; Northern elephant seal, CA breeding; Risso's dolphin, HI; Rough-toothed dolphin, HI; Short-beaked common dolphin, CA/OR/WA; Short-finned pilot whale, HI; Striped dolphin, HI.
Handline/Pole and Line Fisheries:		
Atlantic Highly Migratory Species	2	No information.
Pacific Highly Migratory Species	48	No information.
South Pacific Albacore Troll	15	No information.
Western Pacific Pelagic	6	No information.
Troll Fisheries:		
Atlantic Highly Migratory Species	1	No information.
South Pacific Albacore Troll	24	No information.
South Pacific Tuna Fisheries**	3	No information.
Western Pacific Pelagic	6	No information.
Category III		
Longline Fisheries:		
Northwest Atlantic Bottom Longline	2	None documented.
Pacific Highly Migratory Species	128	None documented in the most recent 5 years of data.
Purse Seine Fisheries:		
Pacific Highly Migratory Species *^	10	None documented.
Trawl Fisheries:		
Northwest Atlantic	4	None documented.
Troll Fisheries:		
Pacific Highly Migratory Species *	150	None documented.

List of Terms, Abbreviations, and Symbols Used in Table 3: CA—California; GMX—Gulf of Mexico; HI—Hawaii; OR—Oregon; WA—Washington; WNA—Western North Atlantic.

* Fishery is an extension/component of an existing fishery operating within U.S. waters listed in Table 1 or 2. The number of permits listed in Table 3 represents only the number of permits for the high seas component of the fishery.

** These gear types are not authorized under the Pacific HMS FMP (2004), the Atlantic HMS FMP (2006), or without a South Pacific Tuna Treaty license (in the case of the South Pacific Tuna fisheries). Because HSFCA permits are valid for five years, permits obtained in past years exist in the HSFCA permit database for gear types that are now unauthorized. Therefore, while HSFCA permits exist for these gear types, it does not represent effort. In order to land fish species, fishers must be using an authorized gear type. Once these permits for unauthorized gear types expire, the permit-holder will be required to obtain a permit for an authorized gear type.

^ The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of marine mammal species and/or stocks killed or injured in U.S. waters component of the fishery, minus species and/or stocks that have geographic ranges exclusively in coastal waters, because the marine mammal species and/or stocks are also found on the high seas and the fishery remains the same on both sides of the EEZ boundary. Therefore, the high seas components of these fisheries pose the same risk to marine mammals as the components of these fisheries operating in U.S. waters.

TABLE 4—FISHERIES AFFECTED BY TAKE REDUCTION TEAMS AND PLANS

Take reduction plans	Affected fisheries
Atlantic Large Whale Take Reduction Plan (ALWTRP)—50 CFR 229.32	*Category I:* Mid-Atlantic gillnet; Northeast/Mid-Atlantic American lobster trap/pot; Northeast sink gillnet. *Category II:* Atlantic blue crab trap/pot; Atlantic mixed species trap/pot; Northeast anchored float gillnet; Northeast drift gillnet; Southeast Atlantic gillnet; Southeastern U.S. Atlantic shark gillnet; * Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot.^
Bottlenose Dolphin Take Reduction Plan (BDTRP)—50 CFR 229.35	*Category I:* Mid-Atlantic gillnet. *Category II:* Atlantic blue crab trap/pot; Chesapeake Bay inshore gillnet fishery; Mid-Atlantic haul/beach seine; Mid-Atlantic menhaden purse seine; NC inshore gillnet; NC long haul seine; NC roe mullet stop net; Southeast Atlantic gillnet; Southeastern U.S. Atlantic shark gillnet; Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl; ^ Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot; ^ VA pound net.
False Killer Whale Take Reduction Plan (FKWTRP)—50 CFR 229.37 ..	*Category I:* HI deep-set longline. *Category II:* HI shallow-set longline.

TABLE 4—FISHERIES AFFECTED BY TAKE REDUCTION TEAMS AND PLANS—Continued

Take reduction plans	Affected fisheries
Harbor Porpoise Take Reduction Plan (HPTRP)—50 CFR 229.33 (New England) and 229.34 (Mid-Atlantic).	*Category I:* Mid-Atlantic gillnet; Northeast sink gillnet.
Pelagic Longline Take Reduction Plan (PLTRP)—50 CFR 229.36	*Category I:* Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline.
Pacific Offshore Cetacean Take Reduction Plan (POCTRP)—50 CFR 229.31.	*Category II:* CA thresher shark/swordfish drift gillnet (≥14 in mesh).
Atlantic Trawl Gear Take Reduction Team (ATGTRT)	*Category II:* Mid-Atlantic bottom trawl; Mid-Atlantic mid-water trawl (including pair trawl); Northeast bottom trawl; Northeast mid-water trawl (including pair trawl).

* Only applicable to the portion of the fishery operating in U.S. waters.
^ Only applicable to the portion of the fishery operating in the Atlantic Ocean.

Classification

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Any entity with combined annual fishery landing receipts less than $11 million is considered a small entity for purposes of the Regulatory Flexibility Act. Under the former, lower size standards, all entities subject to this action were considered small entities; thus, they all would continue to be considered small under the new standards.

Under existing regulations, all individuals participating in Category I or II fisheries must register under the MMPA and obtain an Authorization Certificate. The Authorization Certificate authorizes the taking of non-endangered and non-threatened marine mammals incidental to commercial fishing operations. Additionally, individuals may be subject to a TRP and requested to carry an observer. NMFS has estimated that up to approximately 51,873 fishing vessels, most with annual revenues below the SBA's small entity thresholds, may operate in Category I or II fisheries. As fishing vessels operating in Category I or II fisheries, they are required to register with NMFS. The MMPA registration process is integrated with existing state and Federal licensing, permitting, and registration programs. Therefore, individuals who have a state or Federal fishing permit or landing license, or who are authorized through another related state or Federal fishery registration program, are currently not required to register separately under the MMPA or pay the $25 registration fee. Through this integrated process, registration under the MMPA, including the $25 registration fee, is only required for vessels participating in a Category I or II non-permitted fishery. All Category I and II fisheries listed on the 2019 proposed LOF are permitted through state or Federal processes and registration under the MMPA is covered through the integrated process. Therefore, this proposed rule would not impose any direct costs on small entities.

The MMPA requires any vessel owner or operator participating in a fishery listed on the LOF to report to NMFS, within 48 hours of the end of the fishing trip, all marine mammal incidental mortalities and injuries that occur during commercial fishing operations. These marine mammal mortalities and injuries are reported using a postage-paid, OMB approved form (OMB number 0648–0292). This postage-paid form requires less than 15 minutes to complete and can be dropped in any mailbox, faxed, emailed, or completed online within 48 hours of the vessels return to port. Therefore, record keeping and reporting costs associated with this LOF are minimal and would not have a significant impact on a substantial number of small entities.

If a vessel is requested to carry an observer, vessels will not incur any direct economic costs associated with carrying that observer. As a result of this certification, an initial regulatory flexibility analysis is not required and none has been prepared. In the event that reclassification of a fishery to Category I or II results in a TRP, economic analyses of the effects of that TRP would be summarized in subsequent rulemaking actions.

This proposed rule contains existing collection-of-information (COI) requirements subject to the Paperwork Reduction Act and would not impose additional or new COI requirements. The COI for the registration of individuals under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0293 (0.15 hours per report for new registrants). The requirement for reporting marine mammal mortalities or injuries has been approved by OMB under OMB control number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the COI. Send comments regarding these reporting burden estimates or any other aspect of the COI, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES** and **SUPPLEMENTARY INFORMATION**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a COI, subject to the requirements of the Paperwork Reduction Act, unless that COI displays a currently valid OMB control number.

This proposed rule has been determined to be not significant for the purposes of Executive Orders 12866 and 13563.

This rule is not expected to be an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

In accordance with the Companion Manual for NOAA Administrative Order (NAO) 216–6A, NMFS preliminarily determined that publishing this proposed LOF qualifies to be categorically excluded from further NEPA review, consistent with categories of activities identified in Categorical Exclusion G7 (''Preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis'') of the Companion Manual and we have not identified any extraordinary circumstances listed in Chapter 4 of the Companion Manual for NAO 216–6A

that would preclude application of this categorical exclusion. If NMFS takes a management action, for example, through the development of a TRP, NMFS would first prepare an Environmental Impact Statement (EIS) or Environmental Assessment (EA), as required under NEPA, specific to that action.

This proposed rule would not affect species listed as threatened or endangered under the ESA or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this proposed rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would consult under ESA section 7 on that action.

This proposed rule would have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs, stranding and sighting data, or take reduction teams.

This proposed rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

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Dated: October 18, 2018.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2018–23124 Filed 10–22–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–XG543

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Small-Mesh Multispecies Fishery; Public Comment Period for Amendment 22 to the Northeast Multispecies Fishery Management Plan

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

ACTION: Request for comments.

SUMMARY: The New England Fishery Management Council requests public comment on Amendment 22 to the Northeast Multispecies Fishery Management Plan, including a Draft Environmental Impact Statement. To meet the purpose and need, this amendment proposes alternatives that would initiate a limited access program for the small-mesh multispecies fishery, adjust whiting and red hake possession limits, and modify permit types and characteristics to make them consistent with limited access.

The Council recently solicited comments and held a series of public hearings on the draft amendment. Due to an inconsistency in the information available during the comment period, the Council will solicit comments for an additional 30 days and hold an informational webinar to explain the data inconsistency and review the alternatives in the amendment and Draft Environmental Impact Statement.

DATES: We must receive written comments on or before November 23, 2018. The informational webinar will take place on Wednesday, November 14, 2018 at 3 p.m. at the following web address: *https://global.gotomeeting.com/join/843126117,* or by telephone at (872) 240–3311, using Access Code 43–126–117.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0169 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments directly to the Council at *comments@nefmc.org* or by fax to (978) 465–3116, with ''Comments on Whiting Amendment 22'' on the subject line.
- *Mail:* Submit written comments to Thomas A. Nies, Executive Director,

New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Mark the outside of the envelope, ''Comments on Whiting Amendment 22.''

Instructions: You must submit comments by one of the above methods to ensure that the comments are received, documented, and considered by Council. The Council may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on the Council's website at *www.nefmc.org* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. The Council will accept attachments to electronic comments only in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats.

The hearing documents are accessible electronically via the internet at *https://www.nefmc.org/library/amendment-22* or by request to Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Andrew Applegate, Senior Fisheries Analyst, (978) 465–0492, ext. 114.

SUPPLEMENTARY INFORMATION:

Background

The small-mesh multispecies complex consists of five stocks: Northern silver hake, southern silver hake, and offshore hake, all collectively referred to as whiting; along with northern and southern red hake. The New England Fishery Management Council (Council) manages these stocks as part of the Northeast Multispecies Fishery Management Plan (FMP). Fishermen targeting whiting and hake use small-mesh trawl gear. The Council manages the fishery through multiple small-mesh exemptions to the northeast multispecies (also called groundfish) regulations. The small-mesh multispecies fishery is open access, meaning any vessel may obtain a permit to fish with small-mesh gear to target whiting and hake.

Based on specifications set forth by the Council, NMFS sets annual catch levels for each of the small-mesh multispecies stocks. The fishery routinely harvests a small fraction of the allowable silver hake landings each year, due to high bycatch levels of red hake that reduce the possession limits to incidental levels once a certain percentage of the red hake annual catch limits are reached. Northern whiting and hake stocks are healthy, but southern red hake is overfished and experiencing overfishing. Southern whiting biomass has been declining for several years and is below the target, but is not considered overfished.

Although the fishery does not harvest optimum yield, there are concerns that it could become more difficult to manage if continued open access results in bycatch levels could prematurely close the directed small-mesh multispecies fishery. In response, the Council developed Amendment 22 to the FMP. The amendment considers multiple alternatives for a limited access program, along with various options for possession limits and permit conditions should the Council ultimately choose to limit access in the fishery. The Council's preferred alternative is to maintain open access.

Amendment 22 includes a Draft Environmental Impact Statement (DEIS), which analyzes the impacts of the various management alternatives. In July of 2018, the Council hosted a series of public hearings and solicited comments on the DEIS and amendment. Along with the DEIS, the Council prepared a separate public hearing document to summarize the impacts of alternatives, which included the estimated number of vessels that would qualify under each limited access alternative. After the public hearings, and while discussing potential final action, the Council discovered a discrepancy between the numbers in the public hearing document and the DEIS. Upon further investigation, it concluded that the DEIS analyses were based on the correct information, while the information in the summary section of the DEIS and the public hearing document were based on preliminary analyses that had been conducted in early development of the amendment. The correct results were available to the public and Council when the Council approved the range of alternatives in June 2017 and chose preferred alternatives in December 2017.

Given the discrepancy between the summary information and the DEIS, the Council announced that it will provide the public with an additional 30-day comment period and hold an informational webinar using the most up-to-date information to explain the data discrepancy and afford additional opportunity for comment.

The Council will accept comments until 1 p.m. on November 23, 2018. See the **DATES** section for the timing of the webinar and how you may participate. The Council's Small-Mesh Fishery Committee and Advisory Panel will review the public comments and make recommendations for action to the Council. The Council will consider these recommendations and take final action on Amendment 22 during its December 2018 meeting.

Authority: 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 5101 *et seq.*

Dated: October 17, 2018.

Karen H. Abrams,

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

[FR Doc. 2018–23123 Filed 10–22–18; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 83, No. 205
Tuesday, October 23, 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.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 18, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden 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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 23, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR 1944–I, ''Self-Help Technical Assistance Grants.''

OMB Control Number: 0575–0043.

Summary of Collection: Authorized under Public Law 90–448, section 523 of the Title 5 Housing Act of 1949, this regulation sets forth the policies and procedures and delegates the authority for providing technical assistance funds to eligible applicants to finance programs of technical and supervisory assistance for the Mutual and Self-Help Housing (MSH) program. The MSH program affords very low and low-income families the opportunity for home ownership by constructing their own homes. The MSH program provides funds to non-profit organizations for supervisory and technical assistance to the homebuilding families. Three types of funds are available under the MSH program: (1) Technical assistance grants, (2) Pre-development grants and (3) Site option loans.

Need and use of the Information: Rural Housing Service (RHS) will collect information from non-profit organizations that want to develop a MSH program in their area to increase the availability of affordable housing. The information is collected at the local, district and state levels. The information requested by RHS includes financial and organizational information about the non-profit organization. RHS needs this information to determine if the organization is capable of successfully carrying out the requirements of the MSH program. The information is collected on an as requested or needed basis. RHS has reviewed the program's need for the collection of information versus the burden placed on the public.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 100.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 3,177.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–23074 Filed 10–22–18; 8:45 am]
BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 18, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden 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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by November 23, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW, Washington, DC 20503. Commentors are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to

the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Forest Products Removal Permits and Contracts.

OMB Control Number: 0596–0085.

Summary of Collection: The Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, 122 Stat. 1651) hereinafter the ''2008 Farm Bill''), section 8105 authorizes that the Secretary of Agriculture may provide, free of charge, to federally recognized Indian Tribes trees, portions of trees, or forest products from National Forest System lands for noncommercial traditional and cultural purposes. Individuals and businesses that wish to remove forest products from national forest lands must request a permit. 16 U.S.C. 551 requires the promulgation of regulations to regulate forest use and prevent destruction of the forests. Regulations at 36 CFR 223.1 and 223.2 govern the sale of forest products such as Christmas trees, pinecones, moss, and mushrooms. Regulations at 36 CFR 223.5 through 223.11 set forth conditions under which free use of forest products may be obtained by individuals or organizations. Upon receiving a permit, the permittee must comply with the terms of the permit at 36 CFR 261.6 that designate the forest products that can be harvested and under what conditions, such as limiting harvest to a designated area or permitting harvest of only specifically designated material.

Need and Use of the Information: Using forms FS–2400–1/BLM–5450–24, FS–2400–4ANF and FS–2400–8, FS and BLM will collect the name, vehicle information, address and tax identification number from persons applying for permits. The information will be used to keep a record of persons buying forest products and to determine if the applicant meets the criteria under which free use or sale of forest products is authorized by the regulations and to ensure that the permittee has not received product values in excess of the amount allowed by regulation in any one fiscal year and complies with the regulations and terms of the permit. Under the 2008 Farm Bill Authority, the Federally recognized Indian Tribe/Tribal Official makes their free-use request in writing and submits it to the appropriate local FS District Ranger's Office. This information is also needed to allow FS compliance personnel to identify permittees in the field. Without the forest product removal program, achieving multiple use management programs such as reducing fire hazard and improving forest health on the National Forest would be impaired.

Description of Respondents: Individuals or households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 192,204.

Frequency of Responses: Reporting: On occasion; Recordkeeping.

Total Burden Hours: 33,434.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–23054 Filed 10–22–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead National Forest; Montana; Mid-Swan Landscape Restoration & Wildland Urban Interface Fuels Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Mid-Swan Landscape Restoration and Wildland Urban Interface Fuels Project (Mid-Swan) area encompasses approximately 246,000 acres within the larger 1.3 million acre Southwestern Crown of the Continent landscape. This project is part of a long-term effort between the USDA Forest Service and the Southwestern Crown Collaborative to restore the resilience and function of the ecosystem within this landscape. The Mid-Swan project is proposing treatments on approximately 70,000 acres to improve aquatic and terrestrial biodiversity by removing vegetation, planting drought tolerant species found there historically, and reducing fuel buildup in the wildland urban interface (WUI).

DATES: Comments concerning the scope of the analysis must be received by November 23, 2018. The publication of the Draft Environmental Impact Statement (DEIS) is expected in April 2019, and the Final Environmental Impact Statement (FEIS) is expected to be published in October 2019.

ADDRESSES: Send written comments to Mid-Swan Project, Attention: Sandy Mack, 24 Fort Missoula Road, Missoula, MT 59804. Comments may also be sent via email to *bslrp@fs.fed.us,* or submitted through an electronic form available on our project page at *https://www.fs.usda.gov/projects/flathead/landmanagement/projects.*

FOR FURTHER INFORMATION CONTACT: Sandy Mack, Team Leader, via email at *spmack@fs.fed.us,* or calling 406–329–3817; Chris Dowling, Swan Lake District Ranger, via email at *cdowling@fs.fed.us,* or calling 406–837–7501.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION

Purpose and Need for Action

Today's Mid-Swan landscape is the result of mixed ownerships across a diverse landscape with a variety of forest types. Timber harvest was prevalent in this area through the 20th century with combined state forest cutting to support local schools, harvest for commercial timber interests owned by Plum Creek, and National Forest System (NFS) lands that are managed for multiple uses. Fire suppression and commercially aggressive harvest practices left fire intolerant tree species behind to reseed the area. A logging method known as high-grading was practiced in some areas that removed the best trees and their naturally selected seed source. Roads in the area were built to a mix of design standards; and, are in various states of maintenance with less stable roads contributing to sedimentation into watersheds.

The purpose of the Mid-Swan project is to restore and maintain aquatic biodiversity, and terrestrial biodiversity. It is also to reduce the risk from wildfire in the wildland urban interface where national forest system lands are close or adjacent to private land. The Mid-Swan area is at risk of losing key habitat components for native aquatic and terrestrial species in this ecologically important landscape. Currently state, federal and private infrastructure, recreationists, and residents are at risk from fire. Wildland firefighters are especially at risk when engaging with extreme wildfire behavior in this area.

The Mid-Swan landscape was assessed with three-dimensional high resolution aerial photography through photo interpretation, ground truthing, and modeling in order to determine the needs across the landscape.

The following problems have been identified regarding aquatic biodiversity within the project area:

1. Amount of sediment in streams;

2. fish barriers blocking access to available habitat; and

3. lack of small scale disturbance in riparian areas due to reduced beaver activity and warming waters.

Problems with terrestrial biodiversity include:

1. Loss of large trees and old forest structure;
2. loss of western white pine and whitebark pine;
3. Lynx habitat quality and distribution and long-term availability;
4. missed fire intervals through fire suppression (fire deficit);
5. overabundance of young forests with multi-stories and shade tolerant species, in particular subalpine fir;
6. highly fragmented forests in the valley bottom (too many small patches); and
7. homogenous forests at higher elevations due to fire suppression (in a few large patches).

An analysis of the WUI identified that current fuel conditions would create flame lengths greater than four feet precluding direct attack. Crown fire initiation and crown fire propagation conditions are high.

Proposed Action

In order to restore and maintain aquatic ecosystem resilience, this project proposes to storm proof (decommission, store, or improve) approximately 167 miles of existing Forest Service roads, including about 20 miles of road that are within riparian management zones (RMZ). The goals of the project include: Reducing sediment loads in streams through road storage and decommissioning (storm proofing); removal of five fish passage barriers (culverts) at road/stream crossings; application of vegetative treatment actions within RMZs to better match desired conditions; and, to install beaver dam analog structures at nine stream sites to increase water holding capacity in cold water drainages. The artificial beaver dams would slightly offset predicted climate induced stressors in key stream reaches.

The Mid-Swan EIS will also propose treatments on forest ecosystems to promote resilience by reducing ladder fuels, decreasing crown bulk density, and reducing the risk of crown fire in large ponderosa pine, western larch and Douglas-fir forest types. Other proposed treatments will include thinning to reduce competition from shade tolerant conifers. Goals include planting rust resistant western white pine stock in suitable areas after regeneration harvest. Tree composition will also be improved through the removal of encroaching subalpine fir and Engelmann spruce and the planting of rust resistant whitebark pine. Another goal of the Mid-Swan project is to restore whitebark pine stands by caching rust resistant whitebark pine seeds; and, converting overabundant competing multistory subalpine fir patches to other cover types with better structural stages. Whitebark pine restoration would also be promoted by breaking up large homogeneous patches through mechanical treatments and prescribed fire.

To reduce risk of wildfire in the WUI, proposed actions will include removing vegetation to reduce potential flame lengths to four feet or less; reducing ladder fuels to minimize crown fire initiation; and reduction of canopy fuels to minimize crown fuel propagation.

Vegetation treatments would include: Non-commercial thinning on approximately 2,900 acres, thinning with variable retention on 12,000 acres, thinning with regeneration openings on 21,700 acres, regeneration harvest with variable retention on 7,400 acres, controlled burning on 24,600 acres, planting on 500 acres, and seed caching on 900 acres. Proposed treatment methods include the use of tractor, skyline, helicopter, and hand treatments. The total number of acres proposed for treatment is approximately 70,000. Both temporary and permanent road construction would be needed to access treatments. This project would not change, increase, or reduce open motorized travel routes identified in the Flathead National Forest Motor Vehicle Use Map.

Responsible Official

The Responsible Official for this project is the Flathead National Forest Supervisor.

Nature of Decision To Be Made

The Flathead National Forest Supervisor will decide whether to implement the action as proposed, take no action, or to implement an alternative, or combination of alternatives, that have been analyzed. The Forest Supervisor will also decide whether to amend the Land and Resource Management Plan, if necessary, to implement the decision.

Forest Plan Amendment

Two project-specific suspension of forest plan standards would be required to implement the proposed actions and achieve desired conditions. The substantive requirements of the 2012 Planning Rule (36 CFR 219) that are directly related to the proposed amendments are § 36 CFR 219.8 (a)(1); 219.9 (a)(1); 219.9 (a)(2); 219.9 (b)(1); and 219.10 (a)(8). The proposed amendments are:

1. Conduct non-commercial thinning and regeneration operations in snowshoe hare habitat that occurs from the stand initiation structural stage (Northern Rockies Lynx Management Direction (NRLMD) Standard Veg S5).
2. Conduct thinning activities in mature, multi-story lynx and snowshoe hare habitat (NRLMD Standard Veg S6).

Permits or Licenses Required

When the project is scheduled for implementation the appropriate 404 permits and approval from the US Army Corps of Engineers will be obtained for fish barrier removal and beaver dam analog structures among other proposed actions. Montana Streamside Protection Act, 124 permits, would be obtained for any activity that disturbs stream channels.

Scoping Process

This notice of intent (NOI) to publish an EIS initiates the scoping process, which guides the development of the EIS. An open house will be scheduled following the publication of this NOI and release of the scoping document. The public will be informed through mailing and media release of the date, time, and location.

Your comments will be most useful if they describe a specific action and the environmental effects of that action (cause and effect). If you cite literature in your comments please provide us with a complete bibliography and a copy of the reference material.

It is important that reviewers provide their comments so they are useful to the Agency's preparation of the EIS. Comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered.

Dated: October 4, 2018.

Allen Rowley,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2018–23086 Filed 10–22–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Monongahela National Forest, West Virginia; Big Rock Project

AGENCY: Forest Service, USDA.

ACTION: Withdrawal of notice of intent to prepare environmental impact statement.

SUMMARY: The Monongahela National Forest is withdrawing the Notice of Intent (NOI) to prepare an Environmental Impact Statement for the Big Rock Project. The original NOI was published in the **Federal Register** on July 30, 2014. The environmental analysis for this project is proceeding under an Environmental Assessment.

FOR FURTHER INFORMATION CONTACT: Questions concerning withdrawal of the NOI should be addressed to Karen Stevens (Forest Planner) at the following address: Monongahela National Forest, 200 Sycamore Street, Elkins, West Virginia 26241, or via phone at: 304–635–4480.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Further information about the project can be found at *https://www.fs.usda.gov/project/?project=44762.*

Dated: October 5, 2018.

Allen Rowley,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2018–23087 Filed 10–22–18; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the New Jersey Advisory Committee to the Commission will convene by conference call, on Friday, November 16, 2018 at 12:00 p.m. (EST). The purpose of the meeting is to discuss the topics under review and to select the topic it will examine as its civil rights project.

DATES: Friday, November 16, 2018, at 12:00 p.m. (EST).

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Public Call-In Information: Conference call number: 1–888–778–9069 and conference call ID: 6970676.

Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–888–778–9069 and conference call ID: 6970676. Please be advised that before placing them into the conference call, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and 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 herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number: 1–888–778–9069 and conference call ID: 6970676.

Members of the public are invited to submit written comments; the comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Evelyn Bohor at *ero@usccr.gov*. Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzjVAAQ*; click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

Friday, November 16, 2018 at 12:00 p.m. (EST)

I. Welcome and Introductions and Rollcall

II. Planning Meeting

—Discuss Project Topics

—Discuss Process for Selecting the Topic for the Civil Rights Project

III. Other Business

IV. Adjournment

Dated: October 18, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–23048 Filed 10–22–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Delaware Advisory Committee to the Commission will convene by conference call, on Monday, November 19, 2018 at 4:00 p.m. (EST). The purpose of the meeting is to discuss preparation of the Committee's report on implicit bias and policing in communities of color in Delaware.

DATES: Monday, November 19, 2018, at 4:00 p.m. (EST).

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Public Call-In Information: Conference call number: 1–800–210–9006 and conference call ID: 4124362.

Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–800–210–9006 and conference call ID: 4124362. Please be advised that before placing them into the conference call, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and 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 herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number: 1–800–210–9006 and conference call ID: 4124362.

Members of the public are invited to submit written comments; the comments must be received in the regional office approximately 30 days after each scheduled meeting. Written

comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Evelyn Bohor at *ero@usccr.gov*. Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlEAAQ;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

Monday, November 19, 2018 at 4:00 p.m. (EST)

I. Welcome and Introductions
Rollcall
II. Planning Meeting
Discuss Project Report
III. Other Business
IV. Adjournment

Dated: October 18, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–23047 Filed 10–22–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Alaska Advisory Committee

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 (FACA) that a meeting of the Alaska Advisory Committee (Committee) to the Commission will be held at 12:00 p.m. (Alaska Time) Thursday, October 25, 2018. The purpose of the meeting is for the Committee to review sections of the AK SAC report on Alaska Native voting rights and debrief web-hearings on mail-in voting.

DATES: The meeting will be held on Thursday, October 25, 2018, at 12:00 p.m. AKT.

Public Call Information: Dial: 877–260–1479. Conference ID: 9710098.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 877–260–1479, conference ID number: 9710098. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and 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 entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://facadatabase.gov/committee/meetings.aspx?cid=234.*

Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Review Sections of AK SAC Report
III. Debrief Webhearings
IV. Public Comment
V. Next Steps
VI. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstance of staffing limitations that require immediate action.

Dated: October 18, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–23127 Filed 10–22–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Connecticut Advisory Committee; Correction

AGENCY: Commission on Civil Rights.

ACTION: Notice; correction.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** of Wednesday, October 17, 2018, concerning a meeting of the Connecticut Advisory Committee to be held on Wednesday, November 14, 2018. The caller ID was incorrect.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, (303) 866–1040.

Correction

In the **Federal Register** of Wednesday, October 17, 2018, in FR Doc. 2018–22615, on page 52378, in the third column, and on page 52379, in the first column, correct the conference call ID to read: 8797752.

Dated: October 18, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Coordination Unit.

[FR Doc. 2018–23049 Filed 10–22–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Scientific Advisory Committee Public Meeting

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a meeting of the Census Scientific Advisory Committee (CSAC). The Committee will address policy, research, and technical issues relating to a full range of Census Bureau programs

and activities, including communications, decennial, demographic, economic, field operations, geographic, information technology, and statistics. The CSAC will meet in a plenary session on December 6–7, 2018. The meeting will be available via webcast at: *https://www.census.gov/newsroom/census-live.html.* Last minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments. Please visit the CSAC website for the most current meeting agenda at: *http://www.census.gov/cac/.* The meeting will be available via webcast at: *https://www.census.gov/newsroom/census-live.html.* Topics of discussion will include:

- 2020 Census Program Update
- 2018 End-to-End Test Update
- Administrative Records Update
- Efforts to Modernize Disclosure Limitation Update
- Administrative Data and Third Party Data Use Working Group Report

DATES: December 6–7, 2018. On Thursday, December 6, the meeting will begin at 8:30 a.m. and end at approximately 5:00 p.m. On Friday, December 7, the meeting will begin at 8:30 a.m. and end at approximately 2:00 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau Auditorium, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Tara Dunlop Jackson, Branch Chief for Advisory Committees, Customer Liaison and Marketing Services Office, *census.scientific.advisory.committee@census.gov,* Department of Commerce, U.S. Census Bureau, Room 8H177, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–5222. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The members of the CSAC are appointed by the Director, U.S. Census Bureau. The Committee provides scientific and technical expertise, as appropriate, to address Census Bureau program needs and objectives. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

All meetings are open to the public. A brief period will be set aside at the meeting for public comment on December 7. However, individuals with extensive questions or statements must submit them in writing to: *census.scientific.advisory.committee@census.gov* (subject line ''December 2018 CSAC Meeting Public Comment''), or by letter submission to Tara Dunlop Jackson, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H177, 4600 Silver Hill Road, Washington, DC 20233.

If you plan to attend the meeting, please register by Monday, December 3, 2018. You may access the online registration from the following link *https://csacfallmeeting2018.eventbrite.com.* Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Committee Liaison Officer as soon as known, and preferably two weeks prior to the meeting.

Please call 301–763–9906 upon arrival at the Census Bureau on the day of the meeting. A photo identification must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: October 18, 2018.

Ron S. Jarmin,

Deputy Director, Performing the Non-Exclusive Functions and Duties of the Director, Bureau of the Census.

[FR Doc. 2018–23135 Filed 10–22–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on November 15, 2018, 10 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Open Session

1. Introductions and opening remarks by senior management.
2. Report from working groups.
3. Report by regime representatives.
4. Public Comments.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ l0(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Joanna Lewis at *Joanna.Lewis@bis.doc.gov,* no later than November 8, 2018.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Lewis via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 13, 2018, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 § § 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Joanna Lewis at (202) 482–6440.

Joanna Lewis,

Committee Liaison Officer.

[FR Doc. 2018–23063 Filed 10–22–18; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet December 11, 2018, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman
2. Opening remarks by the Bureau of Industry and Security
3. Presentation of papers or comments by the Public
4. Export Enforcement update
5. Regulations update
6. Working group reports
7. Automated Export System update

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Joanna Lewis at *Joanna.Lewis@bis.doc.gov,* no later than December 4, 2018.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Lewis via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on August 24, 2018, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 § § 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Joanna Lewis at (202) 482–6440.

Joanna Lewis,

Committee Liaison Officer.

[FR Doc. 2018–23064 Filed 10–22–18; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–081]

Glycine From the People's Republic of China: Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations of Glycine From India, Japan, and Thailand

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is aligning the final determination in the countervailing duty (CVD) investigation of glycine from the People's Republic of China (China) with the final determinations in the antidumping duty (AD) investigations of glycine from India, Japan, and Thailand (A–533–883, A–588–878, A–549–837).

DATES: Applicable October 23, 2018.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold and Yasmin Bordas at (202) 482–1121 and (202) 482–3813, respectively, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 2018, Commerce initiated the CVD investigations of Glycine from China, India, and Thailand.[1] Simultaneously, Commerce initiated AD investigations of glycine from India, Japan, and Thailand.[2] The CVD investigations and AD investigations cover the same class or kind of merchandise.[3]

On August 21, 2018, Commerce postponed the preliminary determination in the AD investigations of glycine from India, Japan, and Thailand until October 24, 2018.[4] As indicated in *Glycine from India, Japan, and Thailand: Postponement of Preliminary Determinations,* in accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of the AD investigations will continue to be 75 days after the date of the preliminary determinations (*i.e.,* January 7, 2019), unless postponed at a later date.[5]

On September 4, 2018, Commerce published the preliminary CVD determinations of glycine from China, India, and Thailand.[6] As indicated in *Glycine from India CVD Preliminary Determination* and *Glycine from Thailand CVD Preliminary Determination,* Commerce has aligned the final determinations of the CVD investigations of glycine from India and Thailand with the final determinations of the AD investigations of glycine from India and Thailand, respectively.[7]

Alignment With Concurrent Final AD Determinations

On August 30, 2018, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.210(b)(4)(i), and 351.210(i), the petitioners, GEO Specialty Chemicals, Inc. and Chattem Chemicals, Inc., timely requested alignment of the final determination in the CVD investigation of glycine from China with the final determinations in the concurrent AD investigations of glycine from India, Japan, and Thailand.[8] Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i), we are aligning the final CVD determination of glycine from China with the final AD determinations of glycine from India, Japan, and Thailand.

As stated above, the final CVD determinations of glycine from India

[1] *See Glycine from India, the People's Republic of China, and Thailand: Initiation of Countervailing Duty Investigations,* 83 FR 18002 (April 25, 2018) (*CVD Investigations Initiation Notice*).

[2] *See Glycine from India, Japan, and Thailand: Initiation of Less-Than- Fair-Value Investigations,* 83 FR 17995 (April 25, 2018) (*AD Investigations Initiation Notice*).

[3] *Compare CVD Investigations Initiation Notice,* 83 FR at 18006 (''Scope of the Investigations'') *with AD Investigations Initiation Notice,* 83 FR at 18000 (''Scope of the Investigations'').

[4] *See Glycine from India, Japan, and Thailand: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 83 FR 42259 (August 21, 2018) (*Glycine from India, Japan, and Thailand: Postponement of Preliminary Determinations*).

[5] *Id.*

[6] *See Glycine from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, 83 FR 44863 (September 4, 2018); Glycine from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination, 83 FR 44859 (September 4, 2018) (Glycine from India CVD Preliminary Determination);* and *Glycine From Thailand: Preliminary Negative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination, 83 FR 44861 (September 4, 2018) (Glycine from Thailand CVD Preliminary Determination).*

[7] *Glycine from India CVD Preliminary Determination,* 83 FR at 44860; *Glycine from Thailand CVD Preliminary Determination,* 83 FR at 44862.

[8] *See* Petitioners' Letter to the Secretary re: Request to Align the Countervailing Duty Investigation Final Determination with the Antidumping Duty Investigation Final Determinations in Glycine from Thailand, India and Japan, dated August 30, 2018.

and Thailand have been aligned with the final AD determinations of glycine from India and Thailand. Consequently, the final CVD determination of glycine from China will be issued on the same date as the final AD determinations of glycine from India, Japan, and Thailand and the final CVD determinations of glycine from India and Thailand, which are currently scheduled to be issued no later than January 7, 2019,[9] unless postponed.

This notice is issued and published pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(g).

Dated: October 17, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–23101 Filed 10–22–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Shanghai Wells Hanger Co., Ltd., Hong Kong Wells Ltd., and Hong Kong Wells Ltd. (USA) (collectively, Shanghai Wells) sold subject merchandise in the United States at prices below normal value during the period of review (POR), October 1, 2016, through September 30, 2017.

DATES: Applicable October 23, 2018.

FOR FURTHER INFORMATION CONTACT: Ian Hamilton, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4798.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review on steel wire garment hangers from the People's Republic of China (China) on July 13, 2018.[1] For a discussion of the events subsequent to the *Preliminary Results, see* the Issues and Decision Memorandum.[2]

Scope of the Order

The merchandise subject to the *Order* is steel wire garment hangers.[3] The products are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7326.20.0020, 7323.99.9060, and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description of the scope of the order remains dispositive. For a full description of the scope of the *Order, see* Issues and Decision Memorandum.[4]

Analysis of Comments Received

All issues raised in the case briefs filed by parties in this review are addressed in the Issues and Decision Memorandum, which is incorporated herein by reference. A list of the issues which each party raised, follows in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and it 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 is available at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* and for the reasons explained in the Issues and Decision Memorandum, we made revisions to our preliminary calculations of the weighted-average dumping margin for Shanghai Wells.[5]

Separate Rates

In the *Preliminary Results,* we found that information placed on the record by Shanghai Wells demonstrates that this entity is entitled to separate rate status, which we preliminarily granted.[6] We received no information since the issuance of the *Preliminary Results* that provides a basis for reconsidering the determination with respect to the separate rate status of this entity. Therefore, for the final results, we continue to find that Shanghai Wells is eligible for a separate rate.

Final Results of the Review

Commerce determines that the following weighted-average dumping margin exists for the POR from October 1, 2016, through September 30, 2017:

Exporter	Weighted-average dumping margin (percent)
Shanghai Wells Hanger Co., Ltd./Hong Kong Wells Ltd.[7]	2.68

[9] *See Glycine from India, Japan, and Thailand: Postponement of Preliminary Determinations; Glycine from India CVD Preliminary Determination;* and *Glycine from Thailand CVD Preliminary Determination.*

[1] *See Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 32634 (July 13, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Administrative Review of the Antidumping Duty Order on Steel Wire Garment Hangers from the People's Republic of China; 2016–2017,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Notice of Antidumping Duty Order: Steel Wire Garment Hangers from the People's Republic of China,* 73 FR 58111 (October 6, 2008) (*Order*).

[4] *See* Issues and Decision Memorandum at 2.

[5] *Id.* at 2–4.

[6] *See Preliminary Results,* 83 FR at 32634; *see also* Preliminary Decision Memorandum at 4–5.

[7] In the first administrative review of the *Order,* Commerce found that Shanghai Wells Hanger Co., Ltd. and Hong Kong Wells Ltd. (collectively Shanghai Wells) are a single entity and, because there were no changes to the facts that supported that decision since that determination was made, we continue to find that these companies are part of a single entity for this administrative review. *See Preliminary Results,* 83 FR at 32635; *see also Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review,* 75 FR 68758, 68761 (November 9, 2010), unchanged in *First Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 27994, 27996 (May 13, 2011); *see also Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2015–2016,* 82 FR 54324 (November 17, 2017).

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[8] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the China-wide entity. Because no party requested a review of the China-wide entity in this review, and we did not self-initiate a review, the entity is not under review and the entity's rate is not subject to change, (*i.e.,* 187.25 percent).[9]

Assessment Rates

Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review in the **Federal Register**.

For any individually examined respondent whose (estimated) *ad valorem* weighted–average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent), Commerce will calculate importer-specific *ad valorem* assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1).[10] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated is not zero or *de minimis.* Where either the respondent's *ad valorem* weighted-average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,*[11] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Consistent with Commerce's assessment practice in a review involving a non-market economy, for sales that were not reported in the U.S. sales data submitted by companies individually examined during this review, we will instruct CBP to liquidate entries associated with those sales at the rate for the China-wide entity. Furthermore, where we found that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's cash deposit rate) will be liquidated at the rate for the China-wide entity.[12]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For each specific company listed in the final results of this review, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except, if the *ad valorem* rate is *de minimis,* then the cash deposit rate will be zero); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific cash deposit rate published for the completed segment of the most recent period; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 187.25 percent); and (4) for all non-Chinese exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed within five days of the date of public announcement of these final results of review, in accordance with 19 CFR 351.224(b).

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: October 16, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Issues and Decision Memorandum

[FR Doc. 2018–23052 Filed 10–22–18; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[9] *See Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 41480 (July 15, 2015), and accompanying Preliminary Decision Memorandum, unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2013–2014,* 80 FR 69942 (November 12, 2015).

[10] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[11] *See* 19 CFR 351.106(c)(2).

[12] *See Non-Market Economy Antidumping Proceedings: Assessment Practice Refinement,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–844]

Carbon and Alloy Steel Cut-to-Length Plate From Germany: Partial Rescission of Antidumping Duty Administrative Review; 2016–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is partially rescinding its administrative review of the antidumping duty (AD) order on carbon and alloy steel cut-to-length plate (CTL plate) from Germany for the period of review (POR) November 14, 2016, through April 30, 2018.

DATES: Applicable October 23, 2018.

FOR FURTHER INFORMATION CONTACT: Ross Belliveau, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4952.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2018, Commerce published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on CTL plate from Germany for the POR.[1] In May 2018, Commerce received multiple timely requests to conduct an administrative review of the antidumping duty order on CTL plate from Germany.

On July 12, 2018, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), Commerce published in the **Federal Register** a notice of initiation of an administrative review of the AD order.[2] The administrative review was initiated with respect to 15 companies and covers the period November 14, 2016, through April 30, 2018. Subsequent to the initiation of the administrative review, VDM Metals GmbH and VDM Metals International GmbH (collectively, VDM), an interested party, timely withdrew its request for review, as discussed below.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 83 FR 19047 (May 1, 2018).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 32270 (July 12, 2018) (*Initiation Notice*); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 39688, 39690 (August 10, 2018).

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party that requested a review withdraws its request within 90 days of the date of publication of notice of initiation of the requested review. VDM withdrew its requests for an administrative review within 90 days of the date of publication of the *Initiation Notice*.[3] Accordingly, Commerce is rescinding this review, in part, with respect to VDM Metals GmbH and VDM Metals International GmbH, in accordance with 19 CFR 353.213(d)(1).

The instant review will continue with respect to the following companies: AG der Dillinger Hüttenwerke; Perficon Steel GmbH; Reiner Brach GmbH & Co. KG; Rudolf Rafflenbeul Stahlwarenfabrik GmbH & Co; Ilsenburger Grobblech GmbH, Salzgitter Mannesmann Grobblech GmbH, Salzgitter Flachstahl GmbH, and Salzgitter Mannesmann International GmbH (collectively, Salzgitter); Tenova (TAKRAF GmbH Lauchhammer); ThyssenKrupp Steel Europe AG; ThyssenKrupp Schulte GmbH; UPC Universal Piping GmbH; and VETTER Umformtechnik GmbH.

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, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period November 14, 2016, through April 30, 2018, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers whose entries will be liquidated as a result of this rescission notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

[3] *See* Letter from VDM, ''Re: Carbon and Alloy Steel Cut-to-Length Plate from Germany: Withdrawal of Review Request for VDM,'' dated August 8, 2018.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(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 sanctionable violation. This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: October 17, 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. 2018–23051 Filed 10–22–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Notice of Amended Final Results of Antidumping Duty Administrative Review Pursuant to Settlement; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On June 13, 2017, the Department of Commerce (Commerce) published the final results of the administrative review of the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico. Maquilacero, S.A. de C.V. (Maquilacero) filed a request for panel review under the North American Free Trade Agreement (NAFTA) challenging Commerce's *Final Results.* Maquilacero and Commerce have reached an agreement for settlement of the dispute, which is implemented by these amended final results.

DATES: Applicable October 23, 2018.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Erin Kearney, AD/CVD

Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6312 and (202) 482–0167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 2017, the Department of Commerce (Commerce) published the *Final Results* of its administrative review of the antidumping duty order [1] on certain circular welded non-alloy steel pipe from Mexico.[2] The period of review (POR) is November 1, 2014, through October 31, 2015. Commerce conducted an administrative review of mandatory respondents Maquilacero and Regiomontana de Perfiles y Tubos, S.A. de C.V./PYTCO, S.A. de C.V. (Regiopytsa),[3] and non-selected respondents Conduit, S.A. de C.V. (Conduit), Productos Laminados de Monterrey, S.A. de C.V. (Prolamsa), and Ternium Mexico, S.A. de C.V. (Ternium).[4] In the *Final Results,* Commerce found that there were entries of in-scope merchandise produced and/or exported by Maquilacero, S.A. de C. V. (Maquilacero) during the POR and calculated a 7.32 percent *ad valorem* margin for those entries. However, Commerce also stated its intent to ''adjust the assessment rate for. . . certain entries of subject merchandise produced and/or exported by Maquilacero . . . to account for the total amount of duties that would have been collected on {Maquilacero's} full universe of U.S. sales.'' [5]

On July 12, 2017, Maquilacero timely filed a request for a for a NAFTA panel review challenging Commerce's *Final Results.* Subsequent to Maquilacero's request for this NAFTA panel review, Commerce determined that certain of Maquilacero's tubing products reported during the 2014–2015 administrative review are not within the scope of the *Order.*[6]

The United States and Maquilacero have now entered into an agreement to settle this dispute. The NAFTA Secretariat terminated the panel review with an effective completion date of October 11, 2018.

Assessment Rates

Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended, and 19 CFR 351.212(b). Commerce intends to issue assessment instructions to CBP within 7 days after the date of publication of these amended final results of review in the **Federal Register**.

Commerce will instruct CBP to apply an *ad valorem* assessment rate of 7.32 percent to all entries of subject merchandise during the POR which were produced and/or exported, and imported, by Maquilacero. Commerce will further instruct CBP that certain entries for which suspension of liquidation continued may be of merchandise determined to be out of the scope of the antidumping duty order on circular welded non-alloy steel pipe from Mexico, and that CBP should liquidate those entries without regard to duties, as previously instructed.

The *ad valorem* assessment rates for all entries of subject merchandise during the POR which were produced and/or exported by Regiopytsa, Conduit, Prolamsa, and Ternium remain unchanged from the *Final Results.*

Cash Deposit Requirements

Because a new cash deposit rate has been calculated for Maquilacero in a subsequent administrative review,[7] Commerce will not instruct CBP to change the cash deposit rate for Maquilacero.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and the subsequent assessment of double antidumping duties.

We are issuing this determination and publishing these amended final results of antidumping duty administrative review pursuant to settlement.

Dated: October 17, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–23053 Filed 10–22–18; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992) (the *Order*).

[2] *See Certain Circular Welded Non-Alloy Steel Pipe from Mexico; Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014–2015,* 82 FR 27039 (June 13, 2017) (*Final Results*).

[3] We treated Regiomontana de Perfiles y Tubos, S.A. de C.V., and PYTCO, S.A. de C.V., as a single entity for the *Final Results;* this remains unchanged in these amended final results.

[4] Three additional companies were subject to review but were determined to have had no shipments of subject merchandise into the United States during the POR in the *Final Results;* that determination is unchanged in these amended final results.

[5] *See Final Results,* 82 FR at 27040.

[6] *See Certain Welded Non-Alloy Steel Pipe from Mexico: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision,* 83 FR 7153 (February 20, 2018); *see also* memorandum of final scope ruling re: 176 types of non-galvanized tubing produced to ASTM A–513 specifications by Maquilacero, dated June 18, 2018.

[7] *See Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016,* 83 FR 23886 (May 23, 2018).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–823]

Laminated Woven Sacks From the Socialist Republic of Vietnam: Postponement of Final Determination of Sales at Less Than Fair Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is postponing the deadline for issuing the final determination in the less-than-fair-value (LTFV) investigation of laminated woven sacks (LWS) from the Socialist Republic of Vietnam (Vietnam) until February 25, 2019, and is extending the provisional measures from a four-month period to a period of not more than six months.

DATE: Applicable October 23, 2018.

FOR FURTHER INFORMATION CONTACT: Drew Jackson or Celeste Chen, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4406 or (202) 482–0890, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 2018, Commerce initiated a LTFV investigation of imports of LWS from Vietnam.[1] The period of investigation is July 1, 2017, through December 31, 2017. On October

[1] *See Laminated Woven Sacks from the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigation,* 83 FR 14257 (April 3, 2018).

11, 2018, Commerce published its *Preliminary Determination* in this LTFV investigation of LWS from Vietnam.[2]

Postponement of Final Determination

Section 735(a)(2) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(2) provide that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by the exporters or producers who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Further, 19 CFR 351.210(e)(2) requires that such postponement requests by exporters be accompanied by a request for extension of provisional measures from a four-month period to a period of not more than six months, in accordance with section 733(d) of the Act.

On October 2, 2018, Duong Vinh Hoa Packaging Company Limited, a mandatory respondent in this investigation, requested that Commerce postpone the deadline for the final determination until no later than 135 days from the publication of the *Preliminary Determination,* and extend the application of the provisional measures from a four-month period to a period of not more than six months.[3] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) the preliminary determination was affirmative; (2) the request was made by the exporters and producers who account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination until no later than 135 days after the date of the publication of the *Preliminary Determination,* and extending the provisional measures from a four-month period to a period of not more than six months. Accordingly, Commerce will issue its final determination no later than February 25, 2019.[4]

This notice is issued and published pursuant to 19 CFR 351.210(g).

Dated: October 17, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–23100 Filed 10–22–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: United States Section, NAFTA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review in the matter of Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014–2015 (Secretariat File Number: USA–MEX–2017–1904–01).

SUMMARY: The NAFTA Secretariat has received submissions filed on behalf of the United States Department of Commerce, Maquilacero S.A. de C.V., and Wheatland Tube requesting the termination of panel review in the matter of Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014–2015 (Circular Welded Steel Pipe AR) dispute.

Given all the participants have consented to a Notice of Termination of Panel Review pursuant to Rule 71(2) of the *NAFTA Rules of Procedure for Article 1904 Binational Panel Reviews (Rules),* the NAFTA Circular Welded Steel Pipe AR dispute has been terminated.

As a result, and in accordance with Rule 78(a), notice is hereby given that the panel review of the NAFTA Circular Welded Steel Pipe AR dispute has been completed effective October 11, 2018.

FOR FURTHER INFORMATION CONTACT: Paul E. Morris, United States Secretary, NAFTA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of Article 1904 of NAFTA provides a dispute settlement mechanism involving trade remedy determinations issued by the government of the United States, the government of Canada, and the government of Mexico. There are established *Rules,* which were adopted by the three governments and require Notices of Completion of Panel Review to be published in accordance with Rule 78. For the complete *Rules,* please see *https://www.nafta-sec-alena.org/Home/Texts-of-the-Agreement/Rules-of-Procedure/Article-1904.*

Dated: October 18, 2018.

Paul E. Morris,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 2018–23098 Filed 10–22–18; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: High Seas Fishing Permit Application Information.

OMB Control Number: 0648–0304.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 600.

Average Hours per Response: Permit application with vessel photo (every 5 years); vessel identification, 45 minutes; request to authorize a fishery on the high seas, 22 hours; transshipment notices and reports, 1 hour; 15 minutes; power-down and power-on requests, 5 minutes; observer notification, 5 minutes.

Burden Hours: 272.

Needs and Uses: This request is for extension of a currently approved information collection.

United States vessels that fish on the high seas (waters beyond the U.S. exclusive economic zone) are required to possess a permit issued under the High Seas Fishing Compliance Act (HSFCA). Applicants for this permit must submit information to identify

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[2] *See Laminated Woven Sacks from the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value,* 83 FR 51436 (October 11, 2018) (*Preliminary Determination*).

[3] *See* Letter from Duong Vinh Hoa Packaging Company Limited, ''Antidumping Duty Investigation of Laminated Woven Sacks from the Socialist Republic of Vietnam, Case No. A–552–823: Request to Postpone Final Determination'' dated October 2, 2018.

[4] Postponing the final determination to 135 days after the publication of the *Preliminary Determination* would place the deadline on Saturday/Sunday, February 23, 2019. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended,* 70 FR 24533 (May 10, 2005).

their vessels, owners and operators of the vessels, and intended fishing areas. The application information is used to process permits and to maintain a register of vessels authorized to fish on the high seas.

The HSFCA also requires vessels be marked for identification and enforcement purposes. Vessels must be marked in three locations (port and starboard sides of the deckhouse or hull, and on a weatherdeck) with their official number or radio call sign.

These requirements apply to all vessels fishing on the high seas.

Affected Public: Business or other for-profit organizations.

Frequency: Every five years or on occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: October 18, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–23075 Filed 10–22–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG554

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, November 7, 2018 at 10 a.m.

ADDRESSES: *Meeting address:* The meeting will be held at the Crowne Plaza Hotel, 801 Greenwich Avenue, Warwick, RI 02886; phone: (401) 732–6000.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The committee will review the range of alternatives in the clam dredge framework. These alternatives were developed by the Habitat Plan Development Team with guidance from the Habitat Committee and the Council. They will review the PDT's preliminary analysis of alternatives. The committee will also discuss findings of the Council's Enforcement Committee regarding the use of 5-minute VMS to monitor fishing activity within potential exemption areas. They plan to review the Habitat Advisory Panel recommendations developed on November 5. They will suggest changes to the alternatives and request additional analyses from the PDT to inform final action at the December Council meeting. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: October 18, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–23082 Filed 10–22–18; 8:45 am]

BILLING CODE 3510–22–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 permits and permit amendments or modifications.

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 (Permit No. 21329 and 21217–01), Shasta McClenahan (Permit No. 22272), Sara Young (Permit No. 21719), Erin Markin (Permit Nos. 21327 and 22123), Amy Hapeman (Permit Nos. 17312–01 and 18238–01), and Courtney Smith (Permit No. 16239–03); 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 or amendment issuance date
16239–03	0648–XC268	Dan Engelhaupt, Ph.D., HDR, 4173 Ewell Road, Virginia Beach, VA, 23455.	83 FR 21765; May 10, 2018	September 26, 2018.
17312–01	0648–XC268	Scripps Institution of Oceanography, University of California, 8635 Discovery Way, La Jolla, CA 92093 (Responsible Party: John Hildeband, Ph.D.).	83 FR 21765; May 10, 2018	September 12, 2018.
18238–01	0648–XG302	NMFS Southwest Fisheries Science Center, 8901 La Jolla Shores Drive, La Jolla, CA 92037 (Responsible Party: Lisa Balance, Ph.D.).	83 FR 33209; July 17, 2018	September 20, 2018.
21217–01	0648–XF696	Aaron Roberts, Ph.D., University of North Texas, Biological Sciences, 1155 Union Circle, #310559, Denton, TX 76203.	83 FR 38287; August 6, 2018	September 20, 2018.
21327	0648–XG302	Raymond Carthy, Ph.D., Florida Cooperative Fish and Wildlife Research Unit—USGS BRD, University of Florida, P.O. Box 110485, Gainesville, FL 23611–0450.	83 FR 33209; July 17, 2018	September 20, 2018.
21329	0648–XG345	John P. Wise, Sr., Ph.D., University of Louisville, Department of Pharmacology, 500 S Preston St., Suite 1319, Louisville, KY 40202.	83 FR 34118; July 19, 2018	September 7, 2018.
21719	0648–XG094	NMFS Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543–1097 (Responsible Party: John Hare, Ph.D.).	83 FR 26009; June 5, 2018	September 19, 2018.
21858	0648–XG332	NMFS Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930.	83 FR 31736; July 9, 2018	September 7, 2018.
22123	0648–XG302	Jeffrey Schmid, Ph.D., Conservancy of Southwest Florida, 1495 Smith Preserve Way, Naples, FL 34102.	83 FR 33209; July 17, 2018	September 20, 2018.
22272	0648–XG343	Shaw Institute, 55 Main Street, Blue Hill, ME 04614 (Responsible Party: Susan Shaw).	83 FR 33924; July 18, 2018	September 7, 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: October 18, 2018.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–23077 Filed 10–22–18; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Monday, November 5, 2018.

PLACE: CFTC Headquarters, Lobby-Level Hearing Room, Three Lafayette Centre, 1155 21st Street NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') will hold this meeting to consider the following matters:

- Final Rule Amending the De Minimis Exception to the Swap Dealer Definition;
- Proposed Rule on Amendments to Regulations on Swap Execution Facilities and the Trade Execution Requirement; and
- Request for Comment regarding the Practice of ''Post-Trade Name Give-Up'' on Swap Execution Facilities.

The agenda for this meeting will be available to the public and posted on the Commission's website at *https://www.cftc.gov.* In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's website.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, Secretary of the Commission, 202–418–5964.

Dated: October 19, 2018.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2018–23254 Filed 10–19–18; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Committee; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the Army Education Advisory Committee, Command and General Staff College (CGSC) Board of Visitors Subcommittee will take place.

DATES: The CGSC Board of Visitors Subcommittee will meet from 9:00 a.m. to 5:00 p.m. on December 10, 2018 and from 8:30 a.m. to 12:00 p.m. on December 11, 2018.

ADDRESSES: U.S. Army Command and General Staff College, Lewis and Clark Center, 100 Stimson Ave., Bell Conference Room, Ft. Leavenworth, KS 66027.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Baumann, the Alternate Designated Federal Officer for the subcommittee, in writing at Command and General Staff College, 100 Stimson Ave., Ft. Leavenworth, KS 66027, by email at *robert.f.baumann.civ@mail.mil* or by telephone at (913) 684–2742.

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 to provide the Subcommittee with an overview of CGSC academic programs, as well as information concerning possible future plans. This will be an informational meeting with particular focus on the possibility of establishing additional degree programs at CGSC.

Agenda: The subcommittee will review the results of the visit to CGSC in October 2018 by a team from the Higher Learning Commission and receive information briefings on potential opportunities to introduce additional degree programs at the College. The meeting will culminate with a public discussion by committee members concerning current developments at CGSC. The committee will also complete certain administrative and training requirements associated with the service of individual subcommittee members. Summary minutes of the meeting will be provided to the Army Education Advisory Committee for consideration under the open-meeting rules.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their name, affiliation, and daytime phone number seven business days prior to the meeting to Dr. Baumann, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Because the meeting of the subcommittee will be held in a Federal Government facility on a military base, security screening is required. A photo ID is required to enter base. Please note that security and gate guards have the right to inspect vehicles and persons seeking to enter and exit the installation. Lewis and Clark Center is fully handicap accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Dr. Baumann, the subcommittee's Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Dr. Baumann, the subcommittee Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The Alternate Designated Federal Officer will review all submitted written comments or statements. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Alternate Designated Federal Officer at least seven business days prior to the meeting to be considered by the subcommittee. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting. Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during the Committee meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least seven business days in advance to the subcommittee's Alternate Designated Federal Official, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. The Alternate Designated Federal Officer will log each request, in the order received, and in consultation with the Subcommittee Chair, determine whether the subject matter of each comment is relevant to the Subcommittee's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three minutes during the period, and will be invited to speak in the order in which their requests were received by the Alternate Designated Federal Officer.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–23083 Filed 10–22–18; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Performance Review Board Membership

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SES) Performance Review Boards (PRBs).

FOR FURTHER INFORMATION CONTACT: Leslie Joseph, Director, Executive Management Program Office, Office of Civilian Human Resources at 202–685–6186.

SUPPLEMENTARY INFORMATION: The purpose of the PRBs is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's immediate and

second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for performance bonuses and basic pay increases. Composition of the specific PRBs will be determined on an ad hoc basis from among the individuals listed below:

Mr. Mark Andress
Mr. Todd Balazs
Mr. Claude Baldwin
Ms. Jennifer Balisle
Mr. James Balocki
Mr. Bill Bonwit
Ms. Diane Boyle
Ms. Anne Brennan
Mr. Anthony Cifone
MajGen Craig Crenshaw
Dr. Bruce Danly
RDML Moises DelToro, III
Ms. Catherine Donovan
RDML James Downey
Ms. Steffanie Easter
Ms. Donjette Gilmore
Mr. John Graveen
Mr. Robert Hogue
Mr. Mark Honecker
Ms. Joan Johnson
Mr. Dewey Jordan
Ms. Jennifer LaTorre
Mr. Joe Ludovici
Mr. Michael Madden
Dr. Michael Malanoski
Mr. Donald McCormack, Jr.
Mr. James Meade
Mr. Chris Miller
ADM Michael Moran
RADM Stuart Munsch
Mr. Daniel Nega
Mr. Garry Newton
Dr. Michael Pollock
Ms. Jane Rathbun
Mr. Gary Ressing
Mr. Andrew Richardson
Mr. Thomas Rudowsky
Mr. Mark Russ
Ms. Anne Sandel
Mr. Todd Schafer
Mr. Steven Schulze
Ms. Cindy Shaver
Mr. James Smerchansky
Ms. Sharon Smoot
Mr. Frederick Stefany
Ms. Allison Stiller
Mr. Patrick Sullivan
Ms. Leslie Taylor
Mr. Tony TorresRamos
Mr. Stephen Trautman
Dr. David Walker
Mr. William Williford
VADM Johnny Wolfe, Jr.
Ms. B. Lynn Wright
RDML Michael Zarkowski
Mr. Jeffrey Bearor
Mr. Robert Woods

Dated: October 18, 2018.

Meredith Steingold Werner,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2018–23088 Filed 10–22–18; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

[Case Number 2018–001; EERE–2018–BT–WAV–0001]

Energy Conservation Program: Decision and Order Granting a Waiver to HH Technologies From the Department of Energy Walk-in Cooler and Walk-in Freezer Doors Test Procedure

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

ACTION: Notice of decision and order.

SUMMARY: The U.S. Department of Energy (''DOE'') gives notice of a Decision and Order (Case Number 2018–001) that grants to HH Technologies a waiver from specified portions of the DOE test procedure for determining the energy consumption of specified walk-in cooler and walk-in freezer door (''walk-in door'') basic models. Under the Decision and Order, HH Technologies is required to test and rate the specified basic models of its walk-in doors in accordance with the alternate test procedure specified in the Decision and Order.

DATES: The Decision and Order is effective on October 23, 2018. The Decision and Order will terminate upon the compliance date of any future amendment to the test procedure for walk-in doors located at 10 CFR part 431, subpart R, appendix A that addresses the issues presented in this waiver. At such time, HH Technologies must use the relevant test procedure for this equipment for any testing to demonstrate compliance with the applicable standards, and any other representations of energy use.

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

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 431.401(f)(2)), DOE gives notice of the issuance of its Decision and Order as set forth below. The Decision and Order grants HH Technologies with a waiver from the applicable test procedure in 10 CFR part 431, subpart R, appendix A for specified basic models of walk-in doors, provided that HH Technologies tests and rates such equipment using the alternate test procedure specified in the Decision and Order. HH Technologies' representations concerning the energy consumption of the specified basic models must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the Decision and Order, and the representations must fairly disclose the test results. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy consumption of this equipment. (42 U.S.C. 6314(d))

Consistent with 10 CFR 431.401(j), not later than December 24, 2018, any manufacturer currently distributing in commerce in the United States equipment employing a technology or characteristic that results in the same need for a waiver from the applicable test procedure must submit a petition for waiver. Manufacturers not currently distributing such equipment in commerce in the United States must petition for and be granted a waiver prior to the distribution in commerce of that equipment in the United States. Manufacturers may also submit a request for interim waiver pursuant to the requirements of 10 CFR 431.401.

Signed in Washington, DC, on October 15, 2018.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Case # 2018–001

Decision and Order

I. Background and Authority

The Energy Policy and Conservation Act of 1975 (''EPCA''),[1] Public Law 94–163 (42 U.S.C. 6291–6317, as codified), among other things, authorizes the U.S. Department of Energy (''DOE'') to regulate the energy efficiency of a number of consumer products and industrial equipment. Title III, Part C[2] of EPCA established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency for certain types of industrial equipment. This equipment includes walk-in cooler and walk-in freezer doors (''walk-in doors''), the focus of this document. (42 U.S.C. 6311(1)(G))

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1)

[1] All references to EPCA in this document refer to the statute as amended through the EPS Improvement Act of 2017, Public Law 115–115 (January 12, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated as Part A–1.

Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of covered equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) The test procedure for walk-in doors is contained in the Code of Federal Regulations (''CFR'') at 10 CFR part 431, subpart R, appendix A, *Uniform Test Method for the Measurement of Energy Consumption of the Components of Envelopes of Walk-In Coolers and Walk-In Freezers* (''Appendix A'').

Under 10 CFR 431.401, any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(2).

II. HH Technologies' Petition for Waiver: Assertions and Determinations

By letter dated December 21, 2017, HH Technologies submitted a petition for waiver and a petition for interim waiver from the test procedure applicable to walk-in doors set forth in 10 CFR part 431, subpart R, appendix A. Appendix A accounts for the power consumption of all electrical components associated with each door and discounts the power consumption of electrical components based on their operating time by an assigned percent time off (''PTO'') value. 10 CFR part 431, subpart R, appendix A, section 4.5.2. Section 4.5.2 of appendix A specifies a PTO of 25% for ''other electricity-consuming devices'' (*i.e.,* electrical devices other than lighting or anti-sweat heaters) that have demand-based controls, and a PTO of 0% for other electricity-consuming devices without a demand-based control. *Id.* In its petition for waiver, HH Technologies suggested applying a PTO value of 96% to the door motors and controls in the basic models specified in its petition. The walk-in door basic models specified by HH Technologies are automated and designed with microprocessor controls that use motion sensor inputs to trigger a door motor, which are considered by the DOE test procedure to be ''other electricity-consuming devices with demand-based control.'' [3] HH Technologies asserted that the current PTO value overestimates the time that the motors and controls in the specified automated doors are in operation in high traffic applications. HH Technologies further stated that as a result, the power consumption of the specified automated door motors and controls is overestimated.

On June 18, 2018, DOE published a notice that announced its receipt of the petition for waiver and granted HH Technologies an interim waiver. 83 FR 28211 (''Notice of Petition for Waiver''). In the Notice of Petition for Waiver, DOE presented HH Technologies' claim that results from testing the specified basic models according to Appendix A provide an inaccurate representation of the power consumption of the specified automated door controls in high traffic applications. DOE also summarized HH Technologies' requested alternate test procedure, which would require testing the specified basic models according to Appendix A, except that the PTO value for the door motors and controls is modified from 25% to 96% for freight and passage doors.

As explained in the Notice of Petition for Waiver, DOE evaluated the PTO value requested by HH Technologies using the largest door operating at the slowest speed for which HH Technologies requested a waiver. 83 FR 28211, 28213. In its evaluation, DOE applied a standardized number of door openings, 120 cycles per day, which DOE had proposed as a representative number of door openings per day for all walk-in freight doors as a part of a supplemental test procedure proposal related to infiltration in walk-in doors. *Id.* Based on its evaluation, DOE found the PTO value that HH Technologies requested to use for the specified basic models listed in its petition was appropriate and granted HH Technologies an interim waiver for the specified basic models.

In the Notice of Petition for Waiver, DOE also solicited comments from interested parties on all aspects of the petition and the alternate test procedure. In response, DOE received one comment from Hussmann Corporation (''Hussmann'').[4] Hussmann supported HH Technologies' concept for an alternate test procedure to account for an electrical door opening device used with a demand-based controller. It asserted that the general concept for obtaining an alternate PTO should consider items such as the number of door openings, number of employees working at a facility, and the number of shifts per 24-hour day, and that such consideration should not be limited to a specific application presented in a petition for waiver. Hussmann suggested that DOE consider criteria that would be consistent for all manufacturers of that type of product.

DOE notes that a Decision and Order applies only to those basic models specified in the Order. The PTO values specified by the waiver methodology are appropriate for the basic models that are the subject of the petition. HH Technologies requested PTO values based on the characteristics of the walk-in door basic models specified in its petition. HH Technologies' petition for waiver did not require DOE to consider or evaluate PTO values for other applications. Accordingly, DOE is treating Hussmann's comment on considering criteria applicable to all relevant manufacturers to apply more generally than to the specific waiver request at issue. DOE will consider this issue in greater detail if it should decide to amend the walk-in door test procedure in the future.

For the reasons explained here and the Notice of Petition for Waiver, DOE understands that absent a waiver, the basic models identified by HH Technologies in its petition cannot be tested and rated for energy consumption on a basis representative of their true energy consumption characteristics. DOE has reviewed the recommended procedure suggested by HH Technologies and concludes that it will allow for the accurate measurement of the energy use of the equipment, while alleviating the testing problems associated with HH Technologies' implementation of DOE's applicable walk-in door test procedure for the specified basic models. Thus, DOE is requiring that HH Technologies test and rate the specified walk-in door basic models according to the alternate test procedure specified in this Decision and Order, which is identical to the procedure provided in the interim waiver.

This Decision and Order applies only to the basic models listed and does not extend to any other basic models. DOE evaluates and grants waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner.

HH Technologies may request that the scope of this waiver be extended to include additional basic models that employ the same technology as those listed in this waiver. 10 CFR 431.401(g). HH Technologies may also submit another petition for waiver from the test procedure for additional basic models that employ a different technology and meet the criteria for test procedure waivers. 10 CFR 431.401(a)(1).

DOE notes that it may modify or rescind the waiver at any time upon DOE's

[3] The specific walk-in door basic models that are subject of the petition for waiver and application for interim waiver are included in HH Technologies' petition, which is available in the docket at *http://www.regulations.gov/docket?D=EERE-2018-BT-WAV-0001.*

[4] The Hussmann Corporation comment is available in the docket at: *http://www.regulations.gov/docket?D=EERE-2018-BT-WAV-0001.*

determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, HH Technologies may request that DOE rescind or modify the waiver if the company discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2). Further, the waiver is conditioned upon the validity of the door motor performance characteristics, statements, representations, and documentary materials provided by HH Technologies.

III. Order

After careful consideration of all the material that was submitted by HH Technologies in this matter and the comment received, it is ORDERED that:

(1) HH Technologies must, as of the date of publication of this Order in the **Federal Register**, test and rate the following walk-in door basic models with the alternate test procedure as set forth in paragraph (2):

Brand name	Basic model
RollSeal Automated Door System	RS–500 D5036x075
RollSeal Automated Door System	RS–500 D5036x090
RollSeal Automated Door System	RS–500 D5042x072
RollSeal Automated Door System	RS–500 D5042X084
RollSeal Automated Door System	RS–500 D5048x060
RollSeal Automated Door System	RS–500 D5048x072
RollSeal Automated Door System	RS–500 D5048x084
RollSeal Automated Door System	RS–500 D5048X090
RollSeal Automated Door System	RS–500 D5054x084
RollSeal Automated Door System	RS–500 D5054x096
RollSeal Automated Door System	RS–500 D5057x102
RollSeal Automated Door System	RS–500 D5060x084
RollSeal Automated Door System	RS–500 D5060x090
RollSeal Automated Door System	RS–500 D5060X096
RollSeal Automated Door System	RS–500 D5060X108
RollSeal Automated Door System	RS–500 D5066x084
RollSeal Automated Door System	RS–500 D5066x108
RollSeal Automated Door System	RS–500 D5071x090
RollSeal Automated Door System	RS–500 D5072x084
RollSeal Automated Door System	RS–500 D5072x090
RollSeal Automated Door System	RS–500 D5072x096
RollSeal Automated Door System	RS–500 D5072x102
RollSeal Automated Door System	RS–500 D5072x105
RollSeal Automated Door System	RS–500 D5072X108
RollSeal Automated Door System	RS–500 D5072x114
RollSeal Automated Door System	RS–500 D5072X120
RollSeal Automated Door System	RS–500 D5072x126
RollSeal Automated Door System	RS–500 D5072x138
RollSeal Automated Door System	RS–500 D5073x092
RollSeal Automated Door System	RS–500 D5078x094
RollSeal Automated Door System	RS–500 D5078x102
RollSeal Automated Door System	RS–500 D5078X108
RollSeal Automated Door System	RS–500 D5084x084
RollSeal Automated Door System	RS–500 D5084x096
RollSeal Automated Door System	RS–500 D5084x102
RollSeal Automated Door System	RS–500 D5084x108
RollSeal Automated Door System	RS–500 D5084x114
RollSeal Automated Door System	RS–500 D5084x120
RollSeal Automated Door System	RS–500 D5084x126
RollSeal Automated Door System	RS–500 D5090x096
RollSeal Automated Door System	RS–500 D5090x114
RollSeal Automated Door System	RS–500 D5090x120
RollSeal Automated Door System	RS–500 D5096x090
RollSeal Automated Door System	RS–500 D5096x096
RollSeal Automated Door System	RS–500 D5096x102
RollSeal Automated Door System	RS–500 D5096x114
RollSeal Automated Door System	RS–500 D5096x126
RollSeal Automated Door System	RS–500 D5102x096
RollSeal Automated Door System	RS–500 D5102X108
RollSeal Automated Door System	RS–500 D5102x114
RollSeal Automated Door System	RS–500 D5102x120
RollSeal Automated Door System	RS–500 D5102x126
RollSeal Automated Door System	RS–500 D5108x102
RollSeal Automated Door System	RS–500 D5108X108
RollSeal Automated Door System	RS–500 D5118X084
RollSeal Automated Door System	RS–500 D5118x090
RollSeal Automated Door System	RS–500 D5118X096
RollSeal Automated Door System	RS–500 D5118x118
RollSeal Automated Door System	RS–500 D5120x090
RollSeal Automated Door System	RS–500 D5120x102
RollSeal Automated Door System	RS–500 D5120X108
RollSeal Automated Door System	RS–500 D5120x114
RollSeal Automated Door System	RS–500 D5120x120

Brand name	Basic model
RollSeal Automated Door System	RS–500 D5120x126
RollSeal Automated Door System	RS–500 D5120x138
RollSeal Automated Door System	RS–500 D5120x144
RollSeal Automated Door System	RS–500 D5123x102
RollSeal Automated Door System	RS–500 D5138x114
RollSeal Automated Door System	RS–500 D5144x144
RollSeal Automated Door System	RS–500 D5096x120
RollSeal Automated Door System	RS–600 D6048x084
RollSeal Automated Door System	RS–600 D6048x090
RollSeal Automated Door System	RS–600 D6060x096
RollSeal Automated Door System	RS–600 D6060x120
RollSeal Automated Door System	RS–600 D6072x084
RollSeal Automated Door System	RS–600 D6072x090
RollSeal Automated Door System	RS–600 D6072x096
RollSeal Automated Door System	RS–600 D6072x102
RollSeal Automated Door System	RS–600 D6072x108
RollSeal Automated Door System	RS–600 D6078x126
RollSeal Automated Door System	RS–600 D6078x138
RollSeal Automated Door System	RS–600 D6084x102
RollSeal Automated Door System	RS–600 D6084x108
RollSeal Automated Door System	RS–600 D6090x126
RollSeal Automated Door System	RS–600 D6096x090
RollSeal Automated Door System	RS–600 D6096x096
RollSeal Automated Door System	RS–600 D6096x102
RollSeal Automated Door System	RS–600 D6096x108
RollSeal Automated Door System	RS–600 D6096x114
RollSeal Automated Door System	RS–600 D6096x120
RollSeal Automated Door System	RS–600 D6096x126
RollSeal Automated Door System	RS–600 D6108x108
RollSeal Automated Door System	RS–600 D6120x120
RollSeal Automated Door System	RS–600 D6144x108
RollSeal Automated Door System	RS–600 D6144x144

(2) The alternate test procedure for the HH Technologies basic models referenced in paragraph (1) of this Order is the test procedure for walk-in doors prescribed by DOE at 10 CFR part 431, subpart R, appendix A, except that the percent time off (''PTO'') value specified in section 4.5.2 ''Direct Energy Consumption of Electrical Components of Non-Display Doors'' shall be 96% for door motors. All other requirements of 10 CFR part 431, subpart R, appendix A and DOE's regulations remain applicable.

(3) *Representations.* HH Technologies may not make representations about the energy use of the basic models identified in paragraph (1) of this Order for compliance, marketing, or other purposes unless the basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing in accordance with 10 CFR part 431, subpart R, appendix A and 10 CFR part 429, subpart B, as specified in this Order.

(4) This waiver shall remain in effect according to the provisions of 10 CFR 431.401.

(5) This waiver is issued on the condition that the statements, representations, and documents provided by HH Technologies are valid. If HH Technologies makes any modifications to the controls or configurations of these basic models, the waiver will no longer be valid and HH Technologies will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, HH Technologies may request that DOE rescind or modify the waiver if HH Technologies discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

(6) Granting of this waiver does not release HH Technologies from the certification requirements set forth at 10 CFR part 429.

Signed in Washington, DC, on October 15, 2018.

Kathleen B. Hogan, Ph.D.

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy

[FR Doc. 2018–23097 Filed 10–22–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Case Number 2017–009; EERE–2017–BT–WAV–0040]

Energy Conservation Program: Decision and Order Granting a Waiver to Jamison Door Company From the Department of Energy Walk-in Cooler and Walk-in Freezer Doors Test Procedure

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

ACTION: Notice of decision and order.

SUMMARY: The U.S. Department of Energy (''DOE'') gives notice of a Decision and Order (Case Number 2017–009) that grants to Jamison Door Company (''Jamison'') a waiver from specified portions of the DOE test procedure for determining the energy consumption of walk-in cooler and walk-in freezer doors (''walk-in door'') basic models. Under the Decision and Order, Jamison is required to test and rate specified basic models of its walk-in doors in accordance with the alternate test procedure specified in the Decision and Order.

DATES: The Decision and Order is effective on October 23, 2018. The Decision and Order will terminate upon the compliance date of any future

amendment to the test procedure for walk-in doors located at 10 CFR part 431, subpart R, appendix A that addresses the issues presented in this waiver. At such time, Jamison must use the relevant test procedure for this equipment for any testing to demonstrate compliance with the applicable standards, and any other representations of energy use.

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

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 431.401(f)(2)), DOE gives notice of the issuance of its Decision and Order as set forth below. The Decision and Order grants Jamison with a waiver from the applicable test procedure in 10 CFR part 431, subpart R, appendix A for specified basic models of walk-in doors, provided that Jamison tests and rates such equipment using the alternate test procedure specified in the Decision and Order. Jamison's representations concerning the energy consumption of the specified basic models must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the Decision and Order, and the representations must fairly disclose the test results. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy consumption of this equipment. (42 U.S.C. 6314(d))

Consistent with 10 CFR 431.401(j), not later than December 24, 2018, any manufacturer currently distributing in commerce in the United States equipment employing a technology or characteristic that results in the same need for a waiver from the applicable test procedure must submit a petition for waiver. Manufacturers not currently distributing such equipment in commerce in the United States must petition for and be granted a waiver prior to the distribution in commerce of that equipment in the United States. Manufacturers may also submit a request for interim waiver pursuant to the requirements of 10 CFR 431.401.

Signed in Washington, DC, on October 15, 2018.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Case # 2017–009

Decision and Order

I. Background and Authority

The Energy Policy and Conservation Act of 1975 (''EPCA''),[1] Public Law 94–163 (42 U.S.C. 6291–6317, as codified), among other things, authorizes the U.S. Department of Energy (''DOE'') to regulate the energy efficiency of a number of consumer products and industrial equipment. Title III, Part C[2] of EPCA established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency for certain types of industrial equipment. This equipment includes walk-in cooler and walk-in freezer doors (''walk-in doors''), the focus of this document. (42 U.S.C. 6311(1)(G)).

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a covered equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) The test procedure for walk-in doors is contained in the Code of Federal Regulations (''CFR'') at 10 CFR part 431, subpart R, appendix A, *Uniform Test Method for the Measurement of Energy Consumption of the Components of Envelopes of Walk-In Coolers and Walk-In Freezers* (''Appendix A'').

Under 10 CFR 431.401, any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(2).

II. Jamison's Petition for Waiver: Assertions and Determinations

By letter dated July 26, 2017, Jamison submitted a petition for waiver and a petition for interim waiver from the test procedure applicable to walk-in doors set forth in 10 CFR part 431, subpart R, appendix A.[3] Appendix A accounts for the power consumption of all electrical components associated with each door and discounts the power consumption of electrical components based on their operating time by an assigned percent time off (''PTO'') value. 10 CFR part 431, subpart R, appendix A, section 4.5.2. Section 4.5.2 of appendix A specifies a PTO of 25% for ''other electricity-consuming devices'' (*i.e.,* electrical devices other than lighting or anti-sweat heaters) that have demand-based controls, and a PTO of 0% for other electricity-consuming devices without a demand-based control. *Id.* The walk-in door basic models specified by Jamison in its petition[4] are designed with door motors, which are considered ''other electricity-consuming devices'' with demand-based controls. In its petition for waiver, Jamison suggested applying a PTO value of 93.5% to the door motors in the specified basic models, which move doors at a speed of at least 12 inches per second (''in/s'') or faster. Jamison asserted that the current PTO value overestimates the time that the specified motorized door models are in operation, and stated that a PTO value of 25% would imply that the door motor is running 18 hours per day. Jamison stated that this estimated value of energy use is unrealistic and unrepresentative of the actual energy use of its equipment. Jamison further stated that, based on the typical door motor use pattern

[1] All references to EPCA in this document refer to the statute as amended through the EPS Improvement Act of 2017, Public Law 115–115 (January 12, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated as Part A–1.

[3] Jamison's petition for waiver and petition for interim waiver can be found in the regulatory docket at *https://www.regulations.gov/document?D=EERE-2017-BT-WAV-0040-0002.*

[4] Due to the lengthy list of affected walk-in door basic models in Jamison's July 26, 2017 petition, DOE is making the complete list publicly available in the relevant regulatory docket. The specific basic models identified in Appendix I of the petition can be found in the docket at *https://www.regulations.gov/document?D=EERE-2017-BT-WAV-0040-0002.*

of the specified walk-in doors, its proposed PTO value of 93.5% would more accurately reflect the specified basic models' door motor energy consumption.

On June 19, 2018, DOE published a notice that announced its receipt of the petition for waiver and granted Jamison an interim waiver. 83 FR 28422 (''Notice of Petition for Waiver''). In the Notice of Petition for Waiver, DOE presented Jamison's claim that the results from testing the specified basic models according to Appendix A are unrealistic and unrepresentative of actual energy usage because of the assigned PTO value. DOE also summarized Jamison's requested alternate test procedure, which would require testing the specified basic models according to Appendix A, except that the PTO value for door motors would be modified from 25% to 93.5% for freight and passage doors.

As explained in the Notice of Petition for Waiver, DOE analyzed the technical performance data provided by Jamison, and noted that Jamison's petition sought to apply the same PTO value to its specified basic models that are 24 to 288 inches (i.e. 2 to 24 feet) wide and have motors driven at a minimum speed of 12 in/s. Even when assuming the most energy consumptive scenario would apply, DOE concluded that the proposed 93.5% PTO for the specified basic models was appropriate and agreed with Jamison that for the door motors used in those basic models, the proposed PTO was more representative of actual energy use than the currently required PTO value of 25%.

In the Notice of Petition for Waiver, DOE also solicited comments from interested parties on all aspects of the petition and the specified alternate test procedure. In response, DOE received one comment from Hussmann Corporation (''Hussmann'').[5] Hussmann supported Jamison's request and methodology for an alternate test procedure to account for an electrical door opening device used with a demand-based controller. It asserted that the analysis arriving at a 93.5% PTO value is sound for the product and use specified. Hussmann added that ''door products used in other applications,'' such as control devices that remove moisture in areas of high humidity, may also warrant variations in the PTO.

DOE notes that a Decision and Order applies only to those basic models specified in the Order. The PTO values specified by the waiver methodology are appropriate for the basic models that are the subject of the petition. Jamison requested PTO values based on the characteristics of the basic models specified in its petition. Jamison's petition for waiver did not require DOE to consider or evaluate PTO values for applications other than the door motors in the specified basic models. Accordingly, DOE is treating Hussmann's comments on this point to apply more generally than to the specific waiver request at issue. DOE will consider this issue in greater detail if it should decide to amend the walk-in door test procedure in the future.

For the reasons explained here and the Notice of Petition for Waiver, DOE understands that absent a waiver, the basic models identified by Jamison in its petition cannot be tested and rated for energy consumption on a basis representative of their true energy consumption characteristics. DOE has reviewed the recommended procedure suggested by Jamison and concludes that it will allow for the accurate measurement of the energy use of the equipment, while alleviating the testing problems associated with Jamison's implementation of DOE's applicable walk-in door test procedure for the specified basic models. Thus, DOE is requiring that Jamison test and rate the specified walk-in doors basic models according to the alternate test procedure specified in this Decision and Order, which is identical to the procedure provided in the interim waiver.

This Decision and Order applies only to the basic models listed and does not extend to any other basic models. DOE evaluates and grants waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner.

Jamison may request that the scope of this waiver be extended to include additional basic models that employ the same technology as those listed in this waiver. 10 CFR 431.401(g). Jamison may also submit another petition for waiver from the test procedure for additional basic models that employ a different technology and meet the criteria for test procedure waivers. 10 CFR 431.401(a)(1).

DOE notes that it may modify or rescind the waiver at any time upon DOE's determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, Jamison may request that DOE rescind or modify the waiver if the company discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2). Further, the waiver is conditioned upon the validity of the door motor performance characteristics, statements, representations, and documentation provided by Jamison.

III. Order

After careful consideration of all the material that was submitted by Jamison in this matter and the comment received, it is ORDERED that:

(1) Jamison must, as of the date of publication of this Order in the *Federal Register*, test and rate the walk-in doors basic models listed in Appendix I of its July 26, 2017 petition as provided in Docket Number EERE–2017–BT–WAV–0040[6] with the alternate test procedure as set forth in paragraph (2).

(2) The alternate test procedure for the Jamison basic models referenced in paragraph (1) of this Order is the test procedure for walk-in doors prescribed by DOE at 10 CFR part 431, subpart R, appendix A, except that the PTO value specified in section 4.5.2 ''Direct Energy Consumption of Electrical Components of Non-Display Doors'' shall be 93.5% for door motors. All other requirements of 10 CFR part 431, subpart R, appendix A and DOE's regulations remain applicable.

(3) *Representations.* Jamison may not make representations about the energy use of the basic models referenced in paragraph (1) of this Order for compliance, marketing, or other purposes unless the basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing in accordance with 10 CFR part 431, subpart R, appendix A and 10 CFR part 429, subpart B, as specified in this Order.

(4) This waiver shall remain in effect according to the provisions of 10 CFR 431.401.

(5) This waiver is issued on the condition that the statements, representations, and documentation provided by Jamison are valid. If Jamison makes any modifications to the controls or configurations of these basic models, the waiver will no longer be valid and Jamison will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, Jamison may request that DOE rescind or modify the waiver if Jamison discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

(6) Granting of this waiver does not release Jamison from the certification requirements set forth at 10 CFR part 429.

Signed in Washington, DC, on October 15, 2018.

Kathleen B. Hogan, Ph.D.

Deputy Assistant Secretary for Energy Efficiency Energy Efficiency and Renewable Energy

[FR Doc. 2018–23096 Filed 10–22–18; 8:45 am]

BILLING CODE 6450–01–P

[5] The Hussmann Corporation comment can be found in the docket at: *https://www.regulations.gov/document?D=EERE-2017-BT-WAV-0040.*

[6] Available at: *https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&D=EERE-2017-BT-WAV-0040.*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1744–041]

PacifiCorp; Notice of Application and Applicant-Prepared EA Accepted for Filing, Soliciting Motions To Intervene and Protests, and Soliciting Comments, and Final Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application and applicant-

prepared environmental assessment has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major Constructed Project.

b. *Project No.:* 1744–041.

c. *Date filed:* May 30, 2018.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Weber Hydroelectric Project.

f. *Location:* On the Weber River, in Weber, Davis, and Morgan Counties, Utah. The project occupies 14.94 acres of United States lands administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Eve Davies, PacifiCorp—Renewable Resources, 1407 West North Temple, Suite 210, Salt Lake City, UT 84116; (801) 220–2245; e-mail *eve.davies@pacificorp.com.*

i. *FERC Contact:* Evan Williams at (202) 502–8462; or e-mail at *evan.williams@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, and final terms and conditions, recommendations, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests, comments, and final terms and conditions, recommendations, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–1744–041.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing.

l. *The existing Weber Project consists of:* (1) A 114-foot-long, 16.7-foot-high concrete diversion dam that includes a low-level outlet, a 35-foot-wide intake structure that contains a 22-foot-wide, 31-foot-long, 19-foot-tall concrete intake box, and a 79-foot-long section containing two approximately 30-foot-long, 10-foot-high radial gates; (2) a 3-foot by 18-foot non-operative fish passage structure that is used to pass minimum flows through a calibrated slide gate opening at the dam; (3) an 8.4-acre reservoir having a total storage of approximately 42 acre-feet at elevation 4,798 feet above mean sea level; (4) a 9,110-foot-long, 5.5-foot to 6.3-foot-diameter steel penstock partially encased in concrete, and buried for most of its length; (5) a powerhouse with one 3,850-kilowatt generating unit; (6) a 22-foot-wide, 30-foot-long, 29-foot-high concrete tailrace chamber, integrated into the powerhouse foundation, which returns flows directly into the Weber River on the south side of the powerhouse; (7) a 77-foot-long, 46-kilovolt transmission line; and (8) appurtenant facilities. The project is estimated to generate an average of 16,932 megawatt-hours annually. PacifiCorp proposes to build a new fish passage structure at the edge of the existing diversion dam in an area that currently has graded, unvegetated soil.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *A license applicant must file no later than 60 days following the date of issuance of this notice:* (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

p. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Commission issues EA—July 2019

Comments on EA—August 2019

Dated: October 16, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–23121 Filed 10–22–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19–1–000]

Commission Information Collection Activities (FRC–732); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection 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 currently approved information collection, FERC–732, (Electric Rate Schedules and Tariffs: Long-Term Firm Transmission Rights in Organized Electricity Markets).

DATES: Comments on the collection of information are due December 24, 2018.

ADDRESSES: You may submit comments (identified by Docket No. IC19–1–000) 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.

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:

Title: FERC–732, Electric Rate Schedules and Tariffs: Long-Term Firm Transmission Rights in Organized Electricity Markets.

OMB Control No.: 1902–0245.

Type of Request: Three-year extension of the FERC–732 information collection requirement with no changes to the current reporting requirements.

Abstract: 18 CFR part 42 provides the reporting requirements of FERC–732 as they pertain to long-term transmission rights. To implement section 1233 [1] of the Energy Policy Act of 2005 (EPAct 2005), [2] the Commission requires each transmission organization that is a public utility with one or more organized electricity markets to make available long-term firm transmission rights that satisfy each of the Commission's guidelines.[3]

The FERC–732 regulations require that transmission organizations (that are public utilities with one or more organized electricity markets) choose one of two ways to file:

- File tariff sheets making long-term firm transmission rights available that are consistent with each of the guidelines established by FERC.
- File an explanation describing how their existing tariffs already provide long-term firm transmission rights that are consistent with the guidelines.

Additionally, the Commission requires each transmission organization to make its transmission planning and expansion procedures and plans available to the public.

FERC–732 enables the Commission to exercise its wholesale electric rate and electric power transmission oversight and enforcement responsibilities in accordance with the FPA, the Department of Energy Organization Act (DOE Act), and EPAct 2005.

Type of Respondents: Public utility with one or more organized electricity markets.

Estimate of Annual Burden: [4] The Commission estimates the total burden and cost [5] for this information collection as follows.

FERC–732, ELECTRIC RATE SCHEDULES AND TARIFFS—LONG-TERM FIRM TRANSMISSION RIGHTS IN ORGANIZED ELECTRICITY MARKETS

	Number of respondents	Annual number of responses per respondent	Total number of responses	Total annual burden hours & total annual cost	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(3) * (4) * (5)	(5) ÷ (1)
Public utility with one or more organized electricity markets.	1	1	1	1,180 hrs.; $93,220	$93,220

Comments: Comments are invited on: (1) Whether the collection of information is 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 estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: October 17, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–23112 Filed 10–22–18; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 824.

[2] 6 U.S.C. 824Q.

[3] 18 CFR 42.1(d).

[4] Burden is defined 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, refer to 5 CFR 1320.3.

[5] FERC staff estimates that industry costs for salary plus benefits are similar to Commission costs. The cost figure is the FY2018 FERC average annual salary plus benefits ($164,820/year or $79/hour).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR19–2–000]

EPIC Crude Pipeline, LP; Notice of Petition for Declaratory Order

Take notice that on October 10, 2018, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's

(Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2018), EPIC Crude Pipeline, LP (EPIC Crude), filed a petition for declaratory order seeking approval of the overall tariff and rate structure, terms of service, and open season procedures for a new 730-mile pipeline system that will originate in Orla, Texas and transport crude petroleum produced in the Permian Basin to points of interconnection with terminals located in Orla, Saragosa, Crane, Wink, Midland, Helen, and Gardendale, Texas as well as the Port of Corpus Christi, which will provide export access, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on November 16, 2018.

Dated: October 16, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–23119 Filed 10–22–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–117–000]

Innovative Solar 54, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Innovative Solar 54, 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 November 6, 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: October 17, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–23129 Filed 10–22–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6115–015]

Pyrites Hydroelectric Project; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 6115–015.

c. *Date Filed:* August 31, 2018.

d. *Submitted By:* Pyrites Hydro, LLC.

e. *Name of Project:* Pyrites Hydroelectric Project.

f. *Location:* On the Grass River, a tributary to the St. Lawrence River, near the Town of Canton in St. Lawrence County, New York. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Kevin M. Webb, Hydro Licensing Manager, Pyrites Hydro, LLC, 100 Brickstone Square, Suite 300, Andover, MA 01810, (978) 935–6039; email—*kevin.webb@enel.com.*

i. *FERC Contact:* Chris Millard at (202) 502–8256; or email at *christopher.millard@ferc.gov.*

j. Pyrites Hydro, LLC filed a request to use the Traditional Licensing Process on August 31, 2018 and provided public notice of the request on August 31, 2018. In a letter dated October 17, 2018, the Director of the Division of Hydropower Licensing approved Pyrites Hydro, LLC's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are

also initiating consultation with the New York State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Pyrites Hydro, LLC as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Pyrites Hydro, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 6115–015. Pursuant to 18 CFR 16.8, 16.9, and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by August 31, 2021.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: October 17, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–23117 Filed 10–22–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–119–000]

Techren Solar I LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Techren Solar I 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 November 7, 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: October 18, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–23204 Filed 10–22–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR19–3–000]

EnLink Delaware Crude Pipeline, LLC; Notice of Petition for Declaratory Order

Take notice that on October 11, 2018, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2018), EnLink Delaware Crude Pipeline, LLC, (EnLink) filed a petition for declaratory order seeking approval of the overall tariff and rate structure for EnLink's new pipeline system in the Delaware Basin in New Mexico and Texas, that will gather and transport crude oil from origin points located in Lea and Eddy Counties, New Mexico, to destinations in Eddy County, New Mexico and Loving County, Texas, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC.

There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on November 16, 2018.

Dated: October 16, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–23120 Filed 10–22–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR19–4–000]

Phillips 66 Company v. Colonial Pipeline Company; Notice of Complaint

October 17, 2018.

Take notice that on October 16, 2018, pursuant to sections 1(5), 6, 8, 9, 13, 15 and 16 of the Interstate Commerce Act, 49 U.S.C. App. 1(5), 6, 8, 9, 13, 15 and 16; section 1803 of the Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2772 (1992); Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission's (Commission), 18 CFR 385.206 (2018); and Rules 343.1(a) and 343.2(c) of the Commission's Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.1(a) and 343.2(c) (2018), Phillips 66 Company (Complainant) filed a formal complaint against Colonial Pipeline Company (Respondent), challenging the just and reasonableness of (1) Respondent's cost-based transportation rates in Tariff FERC No. 99.41.0 and predecessor tariffs; (2) Respondent's market-based rate authority and rates charged pursuant to that authority; and (3) Respondent's charges relating to product loss allocation and transmix, as more fully explained in the complaint.

The Complainants certify that copies of the complaint were served on the contacts for Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for 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.

Comment Date: 5:00 p.m. Eastern Time on November 15, 2018.

Dated: October 17, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–23116 Filed 10–22–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–538–000]

Sendero Carlsbad Gateway, LLC; Notice of Schedule for Environmental Review of the Gateway Project

On August 9, 2018, Sendero Carlsbad Gateway, LLC (Gateway) filed an application in Docket No. CP18–538–000 requesting a Certificate of Public Convenience and Necessity pursuant to section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the Gateway Project (Project), and would provide about 400 million standard cubic feet of natural gas per day from Gateway's newly expanded Carlsbad Plant (a cryogenic gas processing plant) to the Agua Blanca intrastate pipeline owned by White Water Midstream, LLC. According to Gateway, the Project would help alleviate natural gas supply delivery constraints in southeast New Mexico and satisfy overall demand in the western region of the United States.

On August 22, 2018, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—January 11, 2019
90-day Federal Authorization Decision Deadline—April 11, 2019

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The Gateway Project would consist of the following facilities:

- Approximately 23 miles of 24-inch-diameter natural gas transmission pipeline in Eddy County, New Mexico and Culberson County, Texas;
- a new meter station (including a mainline block valve and pig [1] launcher) within the existing Carlsbad Plant in Eddy County;
- a mainline block valve at milepost 15.0 in Eddy County; and
- a pig receiver and mainline block valve at milepost 23.3 near a White Water Midstream, LLC meter station in Culberson County.

Background

On August 29, 2018, the Commission issued a *Notice of Intent to Prepare An Environmental Assessment for the Proposed Gateway Project, And Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers.

In response to the NOI, the Commission received comments from

[1] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

the U.S. Department of Agriculture, Texas Commission on Environmental Quality, Texas Parks and Wildlife Department, New Mexico Department of Game and Fish, New Mexico State Historic Preservation Office, and one Native American tribe. The primary issues raised by the commentors were appropriate best management practices for construction and restoration, special status species, surface water, and impacts on vegetation and wildlife. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the projects are available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP18–538), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: October 17, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–23114 Filed 10–22–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–508–000]

Columbia Gas Transmission, LLC; Notice of Schedule for Environmental Review of the Line Ka1 North Launcher/Receiver Project

On June 20, 2018, Columbia Gas Transmission, LLC (Columbia) filed an application in Docket No. CP18–508–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the Line KA1 North Launcher/Receiver Project (Project), and would modify seven discrete points and install two bi-directional launcher/receivers on Columbia's existing Line KA1 North pipeline.

On July 5, 2018, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA December 5, 2018
90-day Federal Authorization Decision Deadline March 5, 2019

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

In order to enable the use of internal inspection tools along the KA1 North pipeline for integrity assessment purposes, Columbia would install one 16-inch by 12-inch launcher/receiver at each end of the pipeline; and remove, replace, and install various stopples, elbows, valves, pipe segments, and other components at a total of seven discrete points along the pipeline in Fayette and Madison Counties, Kentucky.

Background

On August 3, 2018, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Line KA1 North Launcher/Receiver Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received comments from two Native American tribes. The primary issues raised by the commentors pertain to cultural resources. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP18–508), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: October 16, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–23113 Filed 10–22–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–118–000]

Innovative Solar 67, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Innovative Solar 67, 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 November 6, 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: October 17, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–23131 Filed 10–22–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–1–000]

Northern Natural Gas Company; Notice of Application

Take notice that on October 3, 2018, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed an application pursuant to section 7(b) of the Natural Gas Act (NGA) and the Commission's regulations seeking authorization to abandon by sale to DKM Enterprises, LLC (DKM) approximately 146.6 miles of 24-inch-diameter pipeline and other appurtenant facilities on Northern's Palmyra to Ogden A-line system located in Otoe and Cass Counties, Nebraska, and Mills, Pottawattamie, Cass, Audubon, Guthrie, Greene and Boone Counties, Iowa. DKM intends on reclaiming most of the facilities for salvage, all as more fully described 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, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Michael T. Loeffler, Senior Director, Certificates and External Affairs, Northern Natural Gas Company, 1111 South 103rd Street, Omaha, Nebraska, 68124, by telephone at (402) 398–7077, by fax at (402) 398–7190, or by email at *mike.loeffler@nngco.com.*

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 3 copies of filings made in the proceeding with the Commission and must provide a copy to the applicant and to every other party. 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 and will be notified of any 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 and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new Natural Gas Act section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to ''show good cause why the time limitation should be waived,'' and should provide

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC ¶ 61,167 at P 50 (2018).

justification by reference to factors set forth in Rule 214(d)(1) (18 CFR 385.214(d)(1)) of the Commission's Rules and Regulations.

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 an original and 3 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 November 7, 2018.

Dated: October 17, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–23115 Filed 10–22–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11845–001]

Notice of Transfer of Exemption; The Harrisburg Authority, Capital Region Water

October 17, 2018.

1. By letter filed October 1, 2018, The Harrisburg Authority informed the Commission that the exemption from licensing for the Harrisburg Water Supply Project No. 11845, originally issued September 12, 2000 [1] has been transferred from The Harrisburg Authority to Capital Region Water. The project pipe runs between the DeHart Reservoir and the Harrisburg water treatment plant in Daupin County, Pennsylvania. The transfer of an exemption does not require Commission approval.

2. Capital Region Water is now the exemptee of the Harrisburg Water Supply Project No. 11845. All correspondence should be forwarded to: Mr. Michael McFadden, Director of Water Operations, Capital Region Water, 100 Pine Drive, Harrisburg, PA 17103, Phone: 888–510–0606, Email: *michael.mcfadden@capitalwaterregion.com* and Ms. Tanya Dierolf, Manager of Sustainability & Strategic Projects, Capital Water Region, 212 Locust Street, Suite 500, Harrisburg, PA 17101, Phone: 888–510–0606, Email: *tanya.dierolf@capitalregionswater.com.*

[1] Order Granting Exemption From Licensing (Conduit). *The Harrisburg Authority,* 92 FERC ¶ 62,212 (2000).

Dated: October 17, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–23118 Filed 10–22–18; 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: EC19–13–000.

Applicants: AltaGas Renewable Energy Colorado LLC, Black Hills Electric Generation, LLC, Black Hills Corporation, AltaGas Power Holdings (U.S.) Inc.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of AltaGas Renewable Energy Colorado LLC, et. al.

Filed Date: 10/16/18.

Accession Number: 20181016–5173.

Comments Due: 5 p.m. ET 11/6/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–505–004.

Applicants: GridLiance High Plains LLC.

Description: Compliance filing: SCMCN Compliance Filing ER16–505–003 Amendment to be effective 4/1/2016.

Filed Date: 10/17/18.

Accession Number: 20181017–5103.

Comments Due: 5 p.m. ET 11/7/18.

Docket Numbers: ER17–256–006; ER17–242–006; ER17–243–006; ER17–245–006; ER17–652–006.

Applicants: Darby Power, LLC, Gavin Power, LLC, Lawrenceburg Power, LLC, Waterford Power, LLC, Lightstone Marketing LLC.

Description: Notice of Non-Material Change in Status of Darby Power, LLC, et. al.

Filed Date: 10/16/18.

Accession Number: 20181016–5177.

Comments Due: 5 p.m. ET 11/6/18.

Docket Numbers: ER18–730–001.

Applicants: Linden VFT, LLC.

Description: Post-Open Solicitation Compliance Filing, et al. of Linden VFT, LLC.

Filed Date: 10/16/18.

Accession Number: 20181016–5198.

Comments Due: 5 p.m. ET 11/6/18.

Docket Numbers: ER18–1267–004.

Applicants: GridLiance High Plains LLC.

Description: Compliance filing: GridLiance High Plains LLC Compliance Filing ER18–1267 to be effective 3/31/2018.

Filed Date: 10/16/18.

Accession Number: 20181016–5160.

Comments Due: 5 p.m. ET 11/6/18.

Docket Numbers: ER18–1652–002; ER10–1595–011; ER10–1598–011; ER10–1616–011; ER10–1618–011; ER10–2960–009; ER15–356–010; ER15–357–010; ER18–1821–003; ER18–2418–001.

Applicants: AL Mesquite Marketing, LLC, Astoria Generating Company, L.P., Chief Conemaugh Power, LLC, Chief Keystone Power, LLC, Crete Energy Venture, LLC, Great River Hydro, LLC, Lincoln Generating Facility, LLC, New Covert Generating Company, LLC, Rolling Hills Generating, L.L.C., Walleye Power, LLC.

Description: Notice of Non-Material Change in Status of AL Mesquite Marketing, LLC, et al.

Filed Date: 10/16/18.

Accession Number: 20181016–5178.

Comments Due: 5 p.m. ET 11/6/18.

Docket Numbers: ER19–119–000.

Applicants: Techren Solar I LLC.

Description: Baseline eTariff Filing: Application for MBR, Waivers, Blanket Authority, Confidential & Expedited Action to be effective 12/31/9998.

Filed Date: 10/16/18.

Accession Number: 20181016–5141.

Comments Due: 5 p.m. ET 11/6/18.

Docket Numbers: ER19–120–000.

Applicants: Florida Power & Light Company.

Description: § 205(d) Rate Filing: FPL and WM Renewable Energy, LLC Firm P-to-P TSA to be effective 10/17/2018.

Filed Date: 10/16/18.

Accession Number: 20181016–5159.

Comments Due: 5 p.m. ET 11/6/18.

Docket Numbers: ER19–121–000.

Applicants: AltaGas Renewable Energy Colorado LLC, Black Hills Electric Generation, LLC.

Description: § 205(d) Rate Filing: Request for Authorization of Affiliate Transactions of AltaGas and Black Hills to be effective 11/30/2018.

Filed Date: 10/16/18.

Accession Number: 20181016–5165.

Comments Due: 5 p.m. ET 11/6/18.

Docket Numbers: ER19–122–000.

Applicants: ISO New England Inc., The Connecticut Light and Power Company.

Description: § 205(d) Rate Filing: CL&P Request for Approval of Updated Depreciation Rates & Revisions to Sch 21–ES to be effective 5/1/2018.

Filed Date: 10/17/18.

Accession Number: 20181017–5035.

Comments Due: 5 p.m. ET 11/7/18.

Docket Numbers: ER19–123–000.

Applicants: ISO New England Inc., NSTAR Electric Company.

Description: § 205(d) Rate Filing: NSTAR Electric Company Request for Approval of Updated Depreciation Rates to be effective 7/1/2018.

Filed Date: 10/17/18.

Accession Number: 20181017–5036.

Comments Due: 5 p.m. ET 11/7/18.

Docket Numbers: ER19–124–000.

Applicants: PECO Energy Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: PECO Energy submits revisions to OATT, Att. H–7A re: Stipulation in ER17–1519 to be effective 12/1/2017.

Filed Date: 10/17/18.

Accession Number: 20181017–5037.

Comments Due: 5 p.m. ET 11/7/18.

Docket Numbers: ER19–125–000.

Applicants: Duke Energy Florida, LLC.

Description: Tariff Cancellation: DEF–US EcoGen Notice of Termination SA–180 (LGIA) to be effective 12/17/2018.

Filed Date: 10/17/18.

Accession Number: 20181017–5075.

Comments Due: 5 p.m. ET 11/7/18.

Docket Numbers: ER19–126–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2018–10–17_SA 3179 Long Branch Solar-Cooperative Energy GIA (J709) to be effective 10/2/2018.

Filed Date: 10/17/18.

Accession Number: 20181017–5105.

Comments Due: 5 p.m. ET 11/7/18.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR19–1–000.

Applicants: North American Electric Reliability Corporation.

Description: Petition of the North American Electric Reliability Corporation for Approval of Proposed Revisions to Appendix 4E to the Rules of Procedure.

Filed Date: 10/16/18.

Accession Number: 20181016–5192.

Comments Due: 5 p.m. ET 11/6/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 17, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–23130 Filed 10–22–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2014–0859; FRL–9985–68–ORD]

Integrated Science Assessment for Particulate Matter (External Review Draft)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a public comment period for the draft document titled, ''Integrated Science Assessment for Particulate Matter (External Review Draft)'' (EPA/600/R–18/179). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development (ORD) as part of the review of the primary (health-based) and secondary (welfare-based) National Ambient Air Quality Standards (NAAQS) for particulate matter. The welfare-based effects evaluated consist of non-ecological effects, specifically visibility impairment, climate effects, and effects on materials. The Integrated Science Assessment (ISA), in conjunction with additional technical and policy assessments, provides the scientific basis for EPA's decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. EPA is currently developing a separate ISA to support the secondary NAAQS review for ecological effects for oxides of nitrogen, oxides of sulfur, and particulate matter.

EPA is releasing this draft document to seek review by the Clean Air Scientific Advisory Committee (CASAC) and the public. In addition, the date and location of a public meeting for CASAC review of this document will be specified in a separate **Federal Register** notice. This draft document is not final and it does not represent, and should not be construed to represent, any final Agency policy or views. When revising the document, EPA will consider any public comments submitted during the public comment period specified in this notice.

DATES: The public comment period begins on October 23, 2018, and ends December 11, 2018. Comments must be received on or before December 11, 2018.

ADDRESSES: The ''Integrated Science Assessment for Particulate Matter (External Review Draft)'' will be available primarily via the internet on EPA's Integrated Science Assessment Particulate Matter page at *https://www.epa.gov/isa/integrated-science-assessment-isa-particulate-matter* or the public docket at *http://www.regulations.gov,* Docket ID: EPA–HQ–ORD–2014–0859. A limited number of CD–ROM copies will be available. Contact Ms. Marieka Boyd by phone: 919–541–0031; fax: 919–541–5078; or email: *boyd.marieka@epa.gov* to request a CD–ROM, and please provide your name; your mailing address; and the document title, ''Integrated Science Assessment for Particulate Matter (External Review Draft)'' to facilitate processing of your request.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; phone: 202–566–1752; fax: 202–566–9744; or email: *Docket_ORD@epa.gov.*

For technical information, contact Mr. Jason Sacks, NCEA; phone: 919–541–9729; fax: 919–541–1818; or email: *sacks.jason@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants which, among other things, ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air. . .'' Under section 109 of the Act, EPA is then to establish NAAQS for each pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. EPA is also required to review and, if appropriate, revise the NAAQS, based on the revised air quality criteria (for more information on the

NAAQS review process, see *https://www.epa.gov/criteria-air-pollutants/process-reviewing-national-ambient-air-quality-standards*).

Particulate matter is one of six criteria pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an ISA (formerly called an Air Quality Criteria Document). The ISA, in conjunction with additional technical and policy assessments, provides the scientific basis for EPA's decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. The CASAC, an independent science advisory committee whose review and advisory functions are mandated by Section 109(d)(2) of the Clean Air Act, is charged (among other things) with independent scientific review of the EPA's air quality criteria.

On December 3, 2014 (79 FR 71764), EPA formally initiated its current review of the air quality criteria for the health and welfare effects of particulate matter and the primary (health-based) and secondary (welfare-based) NAAQS, requesting the submission of recent scientific information on specified topics. EPA conducted a workshop from February 9 through 11, 2015 to gather input from invited scientific experts, both internal and external to EPA, as well as from the public, regarding key science and policy issues relevant to the review of the primary and secondary NAAQS (79 FR 71764). These science and policy issues were incorporated into EPA's ''Draft Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter,'' which was available for public comment (81 FR 22977) and discussion by the CASAC via publicly accessible teleconference consultation (81 FR 13362). The ''Final Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter'' was released December 6, 2016 (81 FR 87933).

Subsequent webinar workshops were held on June 9th, 13th, 20th, and 22nd, 2016, to discuss initial draft materials prepared in the development of the particulate matter ISA with invited EPA and external scientific experts (81 FR 29262, May 11, 2016). The input received during these webinar workshops aided in the development of the materials presented in the ''Integrated Science Assessment for Particulate Matter (External Review Draft).''

The ''Integrated Science Assessment for Particulate Matter (External Review Draft)'' will be discussed at a public meeting for review by CASAC. In addition to the public comment period announced in this notice, the public will have an opportunity to address CASAC at this meeting. A separate **Federal Register** notice will inform the public of the exact date and time of the CASAC meeting and of the procedures for public participation.

II. How To Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2014–0859, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), Mail Code: 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The ORD Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004.

The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The phone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index; number pages consecutively with the comments; and submit an unbound original; and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2014–0859. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through *www.regulations.gov* or email that you consider to be CBI or otherwise protected. The *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www2.epa.gov/dockets.*

Docket: Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically on *www.regulations.gov* or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Dated: October 16, 2018.

James Avery,

Acting Deputy Director, National Center for Environmental Assessment.

[FR Doc. 2018–23125 Filed 10–22–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2018–0274; FRL–9985–64–ORD]

Webinar Workshop To Review Initial Draft Materials for the Ozone Integrated Science Assessment (ISA) for Health and Welfare Effects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of workshop.

SUMMARY: As part of the review of the air quality criteria and the primary (health-based) and secondary (welfare-based) National Ambient Air Quality Standards (NAAQS) for ozone, Environmental Protection Agency (EPA) is announcing a webinar workshop to

evaluate initial draft materials for the Integrated Science Assessment (ISA) for ozone, which is being organized by EPA's National Center for Environmental Assessment (NCEA) within the Office of Research and Development. The workshop will be held over four days: October 29th, 31st, November 1st, and 5th, 2018. The workshop will be open to webinar attendance by interested public observers on a first-come, first-served basis.

DATES: The workshop will be held on Monday, October 29, 2018; Wednesday, October 31, 2018; Thursday, November 1, 2018; and Monday, November 5, 2018.

ADDRESSES: The workshop will be held by teleconference and webinar. The call-in number and website information for the webinar are available to registered participants. Please register by going to *https://epa-naaqs-isa-ozone.eventbrite.com.*

FOR FURTHER INFORMATION CONTACT: Please direct questions regarding workshop registration or logistics to Ms. Canden Byrd at *EPA_NAAQS_Workshop@icf.com* or by phone at 919–293–1660. Questions regarding the scientific and technical aspects of the workshop should be directed to Ms. Rebecca Daniels; telephone: 919–541–5734; email: *daniels.rebecca@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of Information About the Workshop

Section 109(d)(1) of the Clean Air Act (CAA) requires the U.S. Environmental Protection Agency (EPA) to periodically review, and if appropriate, revise, the air quality criteria for each air pollutant listed under section 108 of the Act. Under the same provision, EPA is also to periodically review, and if appropriate, revise the NAAQS, based on the revised air quality criteria. As part of these reviews, NCEA assesses newly available scientific information and develops ISA documents that provide the scientific basis for the reviews of the NAAQS.

NCEA is holding this webinar workshop to inform EPA's evaluation of the scientific evidence for the review of the primary and secondary NAAQS for ozone. Section 109(b)(1) of the CAA defines primary NAAQS as standards ''the attainment and maintenance of which in the judgment of the Administrator, based on such [air quality] criteria and allowing an adequate margin of safety, are requisite to protect the public health.'' Under section 109(b)(2) of the CAA a secondary standard must ''specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [the] pollutant in the ambient air.''

The purpose of the webinar workshop is to obtain review and discuss the scientific content of initial draft written materials prepared for the draft ozone ISA for health and welfare effects to help ensure that the ISA is up-to-date and focuses on the key evidence to inform the scientific understanding for the review of the primary and secondary NAAQS for ozone. Workshop sessions will include review and discussion of preliminary draft written materials on the atmospheric chemistry and background sources of ozone, welfare effects of ozone, human exposure to ozone and animal toxicological studies, and the health effects evidence from human clinical and epidemiological studies.

In addition, roundtable discussions will help identify key studies or concepts within each discipline to assist EPA in integrating relevant literature within and across disciplines. These preliminary materials are not being released to the public as external review drafts, but they will be used to guide workshop discussions. EPA is planning to release an external review draft ISA for health and welfare effects of ozone for review by the Clean Air Scientific Advisory Committee (CASAC) and the public in 2019.

II. Workshop Information

Members of the public may attend the webinar as observers. Space in the webinar may be limited, and reservations will be accepted on a first-come, first-served basis. Registration for the workshop is available online at *https://epa-naaqs-isa-ozone.eventbrite.com.*

Dated: October 12, 2018.

James Avery,

Acting Deputy Director, National Center for Environmental Assessment.

[FR Doc. 2018–23126 Filed 10–22–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on the Exposure Draft of a Proposed Statement of Federal Financial Accounting Concepts, Materiality

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has released an exposure draft of a proposed Statement of Federal Financial Accounting Concepts (SFFAC), *Materiality,* for public comment.

The proposed SFFAC is available on the FASAB website at *http://www.fasab.gov/documents-for-comment/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on any part of the exposure draft and to provide the reasons for their positions. Written comments are requested by January 23, 2019, and should be sent to *fasab@fasab.gov* or Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW, Suite 1155, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy M. Payne, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: October 15, 2018.

Wendy M. Payne,

Executive Director.

[FR Doc. 2018–23109 Filed 10–22–18; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on the Exposure Draft Interpretation, Guidance on Recognizing Liabilities Involving Multiple Component Reporting Entities

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in

October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has released for public comment an exposure draft of a proposed Interpretation, *Guidance on Recognizing Liabilities Involving Multiple Component Reporting Entities: An Interpretation of SFFAS 5.*

The proposed Interpretation is available on the FASAB website at *http://www.fasab.gov/documents-for-comment/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on any part of the exposure draft and to provide the reasons for their positions. Written comments are requested by January 17, 2019, and should be sent to *fasab@fasab.gov* or Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW, Suite 1155, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy M. Payne, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: October 17, 2018.

Wendy M. Payne,

Executive Director.

[FR Doc. 2018–23110 Filed 10–22–18; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 20, 2018.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Foote Financial Shares, LLC, Manhattan, Kansas;* to become a bank holding company by acquiring 100 percent of the voting shares of Peoples State Bank, Manhattan, Kansas.

Board of Governors of the Federal Reserve System, October 18, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–23099 Filed 10–22–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–224–14, CMS–10684, CMS–10524, CMS–10572, CMS–10433 and CMS–10657]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by December 24, 2018.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–224–14 Federal Qualified Health Center Cost Report

CMS–10684 21st Century Cures Act Section 12002 IMD Study

CMS–10524 Medicare Program; Prior Authorization Process for Certain Durable Medical Equipment, Prosthetic, Orthotics, and Supplies (DMEPOS)

CMS–10572 Transparency in Coverage Reporting by Qualified Health Plan Issuers
CMS–10433 Data Collection to Support QHP Certification and other Financial Management and Exchange Operations
CMS–10657 The State Flexibility to Stabilize the Market Grant Program

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Title of Information Collection:* Federal Qualified Health Center Cost Report; *Type of Information Collection Request:* Extension of a currently approved collection; *Use:* Under the authority of sections 1815(a) and 1833(e) of the Act, CMS requires that providers of services participating in the Medicare program submit information to determine costs for health care services rendered to Medicare beneficiaries. Furthermore, these sections of the Act provide that no Medicare payments will be made to a provider unless it furnishes the information. CMS requires that providers follow reasonable cost principles under 1861(v)(1)(A) of the Act when completing the Medicare cost report. Under the regulations at 42 CFR 413.20 and 413.24, CMS defines adequate cost data and requires cost reports from providers on an annual basis. The Form CMS–224–14 cost report is needed to determine a provider's reasonable cost incurred in furnishing medical services to Medicare beneficiaries and to calculate the FQHC settlement amount. These providers, paid under the FQHC prospective payment system (PPS), may receive reimbursement outside of the PPS for Medicare reimbursable bad debts and pneumococcal and influenza vaccines. The FQHC cost report is also used for rate setting and payment refinement activities, including developing a FQHC market basket. Additionally, the Medicare Payment Advisory Commission (MedPAC) uses the FQHC Medicare cost report data to calculate Medicare margins, to formulate recommendations to Congress regarding the FQHC PPS, and to conduct additional analysis of the FQHC PPS. *Form Number:* CMS–224–14 (OMB control number: 0938–1298); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 2,240; *Number of Responses:* 2,240; *Total Annual Hours:* 129,920. (For questions regarding this collection contact Julie Stankivic at (410) 786–5725.)

2. *Title of Information Collection:* 21st Century Cures Act Section 12002 IMD Study; *Type of Information Collection Request:* New collection (request for a new OMB control number); *Use:* The Act requires that HHS conduct a study of the effects of the 2016 Medicaid Managed Care final rule's provisions that clarified policy on coverage of IMD services in lieu of other covered services. The survey is needed to help answer the 5 mandated study questions. The collected data will be used by CMS develop a Report to Congress as required by the Act. *Form Number:* CMS–10684 (OMB Control Number: 0938–TBD); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 43; *Number of Responses:* 43; *Total Annual Hours:* 86. (For questions regarding this collection contact Laura Snyder at (410) 786–3198.)

3. *Title of Information Collection:* Medicare Program; Prior Authorization Process for Certain Durable Medical Equipment, Prosthetic, Orthotics, and Supplies (DMEPOS); *Type of Information Collection Request:* Revision of a currently approved collection; Use: The CMS has had longstanding concerns about the improper payments related to DMEPOS items. The Department of Health and Human Services' Office of the Inspector General and the U.S. Government Accountability Office have published multiple reports indicating questionable billing practices by suppliers, inappropriate Medicare payments, and questionable utilization of DMEPOS items. The fiscal year (FY) 2017 Medicare FFS program improper payment rate for the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) was 44.6%, accounting for over $3.7 billion in projected improper payments. The CMS has implemented several initiatives in recent years to address these issues, such as the DMEPOS Competitive Bidding Program, as well as heightened screening of suppliers, as authorized by the Affordable Care Act.

In addition to those actions, CMS is continuing the use of prior authorization in fee for service Medicare. Prior authorization is a process through which a request for provisional affirmation of coverage is submitted for review before an item is rendered to a Medicare patient and before a claim is submitted for payment. Prior authorization helps make sure that applicable Medicare coverage, payment, and coding rules are met before item(s) are rendered. Prior to furnishing the item to the beneficiary and prior to submitting the claim for processing, a requester must submit a prior authorization request that includes evidence that the item complies with all applicable Medicare coverage, coding, and payment rules. Consistent with § 414.234(d), such evidence must include the order, relevant information from the beneficiary's medical record, and relevant supplier-produced documentation. After receipt of all applicable required Medicare documentation, CMS or one of its review contractors will conduct a medical review and communicate a decision that provisionally affirms or non-affirms the request. A provisional affirmative decision is a preliminary finding that a future claim submitted to Medicare for the DMEPOS item likely meets Medicare's coverage, coding, and payment requirements. Suppliers who receive a non-affirmative decision have unlimited resubmission opportunities. *Form Number:* CMS–10524 (OMB control number: 0938–1293); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents:* 321,551; *Total Annual Responses:* 321,551; *Total Annual Hours:* 160,775.68 (For policy questions regarding this collection contact Yuliya Cook at (410) 786–0157.)

4. *Title of Information Collection:* Information Collection for Transparency in Coverage Reporting by Qualified Health Plan Issuers; *Type of Information Collection Request:* Extension of a currently approved information collection request; *Use:* Section 1311(e)(3) of the Affordable Care Act requires issuers of Qualified Health Plans (QHPs), to make available and submit transparency in coverage data. This data collection would collect certain information from QHP issuers in Federally-facilitated Exchanges and State-based Exchanges that rely on the

federal IT platform (*i.e.,* HealthCare.gov). HHS anticipates that consumers may use this information to inform plan selection.

As stated in the final rule Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers (77 FR 18310; March 27, 2012), broader implementation will continue to be addressed in separate rulemaking issued by HHS, and the Departments of Labor and the Treasury (the Departments).

Consistent with Public Health Service Act (PHS Act) [1] section 2715A, which largely extends the transparency reporting provisions set forth in section 1311(e)(3) to non-grandfathered group health plans (including large group and self-insured health plans) and health insurance issuers offering group and individual health insurance coverage (non-QHP issuers), the Departments intend to propose other transparency reporting requirements at a later time, through a separate rulemaking conducted by the Departments, for non-QHP issuers and non-grandfathered group health plans. Those proposed reporting requirements may differ from those prescribed in the HHS proposal under section 1311(e)(3), and will take into account differences in markets, reporting requirements already in existence for non-QHPs (including group health plans), and other relevant factors. The Departments also intend to streamline reporting under multiple reporting provisions and reduce unnecessary duplication. The Departments intend to implement any transparency reporting requirements applicable to non-QHP issuers and non-grandfathered group health plans only after notice and comment, and after giving those issuers and plans sufficient time, following the publication of final rules, to come into compliance with those requirements. *Form Number:* CMS–10572 (OMB control number: 0938–1310); *Frequency:* Annually; *Affected Public:* Private Sector (Business or other for-profits); *Number of Respondents:* 160; *Number of Responses:* 160; *Total Annual Hours:* 10,880. (For questions regarding this collection contact Valisha Jackson at (301) 492–5145.)

5. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Data Collection to Support QHP Certification and other Financial Management and Exchange Operations; *Use:* As directed by the rule Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers (77 FR 18310) (Exchange rule), each Exchange is responsible for the certification and offering of Qualified Health Plans (QHPs). To offer insurance through an Exchange, a health insurance issuer must have its health plans certified as QHPs by the Exchange. A QHP must meet certain minimum certification standards, such as network adequacy, inclusion of Essential Community Providers (ECPs), and non-discrimination. The Exchange is responsible for ensuring that QHPs meet these minimum certification standards as described in the Exchange rule under 45 CFR 155 and 156, based on the Patient Protection and Affordable Care Act (PPACA), as well as other standards determined by the Exchange. Issuers can offer individual and small group market plans outside of the Exchanges that are not QHPs.

The instruments in this information collection will be used for the 2020 certification process and beyond. Providing these instruments now will give issuers and other stakeholders more opportunity to familiarize themselves with the instruments before releasing the 2020 application. *Form Number:* CMS–10433 (OMB control number: 0938–1187); *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Governments, Private Sector (Business or other for-profits); *Number of Respondents:* 2,892 *Number of Responses:* 2,892; *Total Annual Hours:* 68,666. (For questions regarding this collection contact Joshua Annas at (301) 492–4407).

6. *Type of Information Collection Request:* Request for a new OMB control number; *Title of Information Collection:* The State Flexibility to Stabilize the Market Grant Program Reporting; *Use:* Section 1003 of the Affordable Care Act (ACA) adds a new section 2794 to the PHS Act entitled, ''Ensuring That Consumers Get Value for Their Dollars.'' Specifically, section 2794(a) requires the Secretary of the Department of Health and Human Services (the Secretary) (HHS), in conjunction with the States, to establish a process for the annual review of health insurance premiums to protect consumers from unreasonable rate increases. Section 2794(c) directs the Secretary to carry out a program to award grants to States. Section 2794(c)(2)(B) specifies that any appropriated Rate Review Grant funds that are not fully obligated by the end of FY 2014 shall remain available to the Secretary for grants to States for planning and implementing the insurance market reforms and consumer protections under Part A of title XXVII of the Public Health Service Act (PHS Act). States that are awarded funds under this funding opportunity are required to provide CMS with four quarterly reports and one annual report (except for the last year of the grant) until the end of the grant period detailing the state's progression towards planning and/or implementing the pre-selected market reforms under Part A of Title XXVII of the PHS Act. A final report is due at the end of the grant period. *Form Number:* CMS–10657 (OMB control number: 0938–NEW); *Frequency:* Annually and Quarterly; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 31; *Total Annual Responses:* 5; *Total Annual Hours:* 2,108. (For policy questions regarding this collection contact Jim Taing at (301) 492–4182.)

Dated: October 17, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff. Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–23027 Filed 10–22–18; 8:45 am]

BILLING CODE 4120–01–P

[1] PHS Act section 2715A also is incorporated into section 715(a)(1) of the Employee Retirement Income Security Act and section 9815(a)(1) of the Internal Revenue Code.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2017–E–5940, FDA–2017–E–5941, FDA–2017–E–5943, and FDA–2017–E–5944]

Determination of Regulatory Review Period for Purposes of Patent Extension; SILIQ

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for SILIQ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by December 24, 2018. Furthermore, any interested person may petition FDA for a determination

regarding whether the applicant for extension acted with due diligence during the regulatory review period by April 22, 2019. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 24, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 24, 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 Nos. FDA–2017–E–5940, FDA–2017–E–5941, FDA–2017–E–5943, and FDA–2017–E–5944 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; SILIQ.'' 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 § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product SILIQ (brodalumab). SILIQ is indicated for treatment of moderate to severe plaque psoriasis in adult patients who are candidates for systemic therapy or phototherapy and have failed to respond or have lost response to other systemic therapies. Subsequent to this approval, the USPTO received patent term restoration applications for SILIQ (U.S. Patent Nos. 7,767,206; 7,939,070; 8,435,518; and 8,545,842) from Kirin-Amgen, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated January 9, 2018, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of SILIQ represented the first permitted commercial marketing or use of the

product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for SILIQ is 3,101 days. Of this time, 2,643 days occurred during the testing phase of the regulatory review period, while 458 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* August 22, 2008. The applicant claims September 26, 2009, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 22, 2008, which was 30 days after FDA receipt of an earlier IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* November 16, 2015. FDA has verified the applicant's claim that the biologics license application (BLA) for SILIQ (BLA 761032) was initially submitted on November 16, 2015.

3. *The date the application was approved:* February 15, 2017. FDA has verified the applicant's claim that BLA 761032 was approved on February 15, 2017.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,156 days, 906 days, or 847 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: October 17, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–23058 Filed 10–22–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0386]

Agency Information Collection Activities; Proposed Collection; Comment Request; Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments and Listing of Ingredients in Tobacco Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on ''Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments and Listing of Ingredients in Tobacco Products.''

DATES: Submit either electronic or written comments on the collection of information by December 24, 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 December 24, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 24, 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–2012–N–0386 for ''Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments and Listing of Ingredients in Tobacco Products.'' 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: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments and Listing of Ingredients in Tobacco Products

OMB Control Number 0910–0650—Extension

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding, among other things, a chapter granting FDA important authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. The Tobacco Control Act created new requirements for the tobacco industry. Section 101 of the Tobacco Control Act amended the FD&C Act by adding sections 905 and 904 (21 U.S.C. 387e and 387d).

Section 905 of the FD&C Act requires the annual registration of any ''establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.'' Section 905 requires this registration be completed by December 31 of each year. The Secretary of Health and Human Services (Secretary) has delegated to the Commissioner of Food and Drugs the responsibility for administering the FD&C Act, including section 905. Section 905 of the FD&C Act requires owners or operators of each establishment to register: (1) Their name; (2) places of business; (3) a list of all tobacco products which are manufactured by that person; (4) a copy of all labeling and a reference to the authority for the marketing of any tobacco product subject to a tobacco product standard under section 907 of the FD&C Act (21 U.S.C. 387g) or to premarket review under section 910 of the FD&C Act (21 U.S.C. 387j); (5) a copy of all consumer information and other labeling; (6) a representative sampling of advertisements; (7) upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and (8) upon request made by the Secretary, if the registrant has determined that a tobacco product contained in the product list is not subject to a tobacco product standard established under section 907 of the FD&C Act, a brief statement of the basis upon which the registrant made such determination.

FDA collects the information submitted pursuant to section 905 of the FD&C Act through an electronic portal, and through paper forms (Forms FDA 3741 and FDA 3741a) for those individuals who choose not to use the electronic portal.

FDA has also published a guidance for industry entitled ''Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments'' (*https://www.fda.gov/downloads/TobaccoProducts/Labeling/RulesRegulationsGuidance/UCM191940.pdf*). This guidance is intended to assist persons making tobacco product establishment registration and product listing submissions to FDA.

Section 904(a)(1) of the FD&C Act requires that each tobacco product manufacturer or importer submit ''a listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand'' by December 22, 2009. This section applies only to those tobacco products manufactured and distributed before June 22, 2009, and which are still manufactured as of the date of the ingredient listing submission.

Section 904(c) of the FD&C Act requires that a tobacco product

manufacturer: (1) Provide all information required under section 904(a) of the FD&C Act to FDA ''at least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment'' of the Tobacco Control Act; (2) advise FDA in writing at least 90 days prior to adding any new tobacco additive or increasing in quantity an existing tobacco additive, except for those additives that have been designated by FDA through regulation as not a human or animal carcinogen, or otherwise harmful to health under intended conditions of use; and (3) advise FDA in writing at least 60 days prior to eliminating or decreasing an existing additive, or adding or increasing an additive that has been designated by FDA through regulation as not a human or animal carcinogen, or otherwise harmful to health under intended conditions of use.

FDA collects the information submitted pursuant to sections 904(a)(1) and 904(c) of the FD&C Act through an electronic portal, and through a paper form (Form FDA 3742) for those individuals who choose not to use the electronic portal.

In addition to the development of the electronic portal and paper form, FDA published a guidance entitled ''Listing of Ingredients in Tobacco Products.'' This guidance is intended to assist persons making tobacco product ingredient listing submissions. FDA also provides a technical guide, embedded hints, and a web tutorial to the electronic portal.

The Tobacco Control Act also gave FDA the authority to issue a regulation deeming all other products that meet the statutory definition of a tobacco product to be subject to Chapter 9 of the FD&C Act (section 901(b) (21 U.S.C. 387a(b)) of the FD&C Act). On May 10, 2016, FDA issued that rule, extending FDA's tobacco product authority to all products that meet the definition of tobacco product in the law (except for accessories of newly regulated tobacco products), including electronic nicotine delivery systems, cigars, hookah, pipe tobacco, nicotine gels, dissolvables that were not already subject to the FD&C Act, and other tobacco products that may be developed in the future (81 FR 28974 at 28976) (''the final deeming rule'')).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA form/activity/TCA section	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Tobacco Product Establishment Initial Registration and Listing; Form FDA 3741 Registration and Product Listing for Owners and Operators of Domestic Establishments (Electronic and Paper submissions); Sections 905(b), 905(c), 905(d), 905(h), or 905(i).	100	1	100	1.6	160
Tobacco Product Establishment Renewal Registration and Listing; Form FDA 3741 Registration and Product Listing for Owners and Operators of Domestic Establishments (Electronic and Paper submissions); Sections 905(b), 905(c), 905(d), 905(h), or 905(i).	3,578	1	3,578	.16 (10 minutes)	572
Tobacco Product Listing; Form FDA 3742 Listing of Ingredients (Electronic and Paper submissions); Section 904(a)(1).	10	1	10	2	20
Tobacco Product Listing; Form FDA 3742 Listing of Ingredients (Electronic and Paper submissions); Section 904(c).	35	2	70	0.40 (24 minutes)	28
Obtaining a Dun and Bradstreet D–U–N–S Number	100	1	100	0.5 (30 minutes)	50
Total					830

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The PRA burden estimates have been updated to fully incorporate the use of an electronic system known as FURLS for submitting registration and product listing information to FDA. With the FURLS, manufacturers can enter information quickly and easily. For example, product label pictures can be uploaded directly. We anticipate that most, if not all companies, already have electronic versions of their labels for printing, sales, or marketing purposes.

Product listing information is provided at the time of registration. Currently, registration and listing requirements only apply to domestic establishments engaged in the manufacture, preparation, compounding, or processing of a tobacco product. This includes importers to the extent that they engage in the manufacture, preparation, compounding, or processing of a tobacco product, including repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package. Foreign establishments are not required to register and list until FDA issues regulations establishing such requirements in accordance with section 905(h) of the FD&C Act. To account for the foregoing, we include both domestic manufacturing establishments and importers in our estimates.

As the deadline for initial establishment registration and product listing for both statutorily regulated and deemed products has passed, FDA estimates that few (up to 100) new establishments will submit one initial establishment registration and product listing report each year. Such new establishments potentially include new vape shop locations that mix or assemble products on the market as of the final deeming rule effective date. The Agency estimates that up to 100 tobacco establishments will each submit 1 initial establishment registration and product listing report each year, which is expected to take 1.6 hours, for a total 160 burden hours.

FDA estimates that the confirmation or updating of establishment registration and product listing information as required by section 905 of the FD&C Act will take 10 minutes annually per confirmation or update per establishment. Based on FDA's experience with current establishment registration and product listings submitted to the Agency, the Agency estimates that on average 3,578 establishments will each submit one confirmation or updated report each year, which is expected to take 0.16 hour (10 minutes) for a total 572 burden hours.

FDA estimates that we have received most tobacco product ingredient submissions for large manufacturers of deemed products. Small manufacturers' deadline for ingredient submissions is November 2018. This is based on the counts we have to date (July 2018), including statutorily regulated products (based on information in our tracking system).

FDA estimates that the submission of ingredient listings required by section 904(a)(1) of the FD&C Act for each establishment will take 2 hours initially. Because this burden estimate covers a timeframe of 3 years, we anticipate almost all section 904(a)(1) tobacco ingredient submissions to have been received before the expiration of the current approval (prior to 11/8/2018 for small manufacturers and large manufacturers, 5/8/18). We are estimating approximately 30 manufacturers may miss their deadline. This is based on estimates of how many large manufacturers we are aware of that have missed their deadline. Because this burden estimate covers 3 years, we are dividing by 3, to yield 10 respondents as a yearly average for this estimate. Therefore, FDA estimates that 10 establishments will initially submit one report annually at 2 hours per report, for a total of 20 hours.

Submissions under 904(c) of the FD&C Act are for any new product that is not yet on the market (*e.g.,* if on the market due to deeming compliance period), newly deemed product manufacturers should have submitted under section 904(a)(1) of the FD&C Act. This includes any statutorily regulated product that would receive a marketing authorization and any new deemed product not subject to the deeming compliance period. For deemed product categories, while we anticipate receiving a large number of premarket applications, there is a portion of these applicants who will have reported their ingredients under section 904(a)(1) as most of these submissions are expected to be for products subject to the deeming compliance period.

Based on FDA's experience and the actual number of product ingredient listings submitted over the past 3 years, FDA estimates that 35 establishments will each submit two reports (one every 6 months). FDA also estimates that the confirmation or updating of product (ingredient) listing information required by section 904(c) of the FD&C Act is expected to take 0.40 hour (24 minutes) and will take 48 minutes annually for two confirmations or updates per establishment, for a total 28 burden hours. FDA estimates that obtaining a DUNS (data universal numbering system) number will take 30 minutes. FDA assumes that all new establishment facilities that will be required to initially register under section 905 of the FD&C Act would obtain a DUNS number. FDA estimates that up to 100 establishments that would need to obtain this number each year. The total industry burden to obtain a DUNS number is 50 hours.

FDA estimates the total burden for this collection to be 830 hours. We have adjusted our burden estimate, which has resulted in a decrease of 93,086 hours to the currently approved burden. Based on data we reviewed from the past 3 years and projecting the number of remaining establishments that have not registered and submitted product ingredient listings, we revised the number of respondents and burden hours in this information collection.

Dated: October 17, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–23056 Filed 10–22–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2017–E–3617, FDA–2017–E–3619, and FDA–2017–E–3618]

Determination of Regulatory Review Period for Purposes of Patent Extension; NUPLAZID

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for NUPLAZID and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by December 24, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by April 22, 2019. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 24, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 24, 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 Nos. FDA–2017–E–3617, FDA–2017–E–3619, and FDA–2017–E–3618 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; NUPLAZID.'' 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 § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, NUPLAZID (pimavanserin tartrate). NUPLAZID is indicated for treatment of hallucinations and delusions associated with Parkinson's disease psychosis. Subsequent to this approval, the USPTO received patent term restoration applications for NUPLAZID (U.S. Patent Nos. 7,601,740; 7,659,285; and 7,732,615) from ACADIA Pharmaceuticals Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 20, 2017, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of NUPLAZID represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for NUPLAZID is 4,557 days. Of this time, 4,315 days occurred during the testing phase of the regulatory review period, while 242 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* November 9, 2003. FDA has verified the applicant's claim that the date the investigational new drug application became effective was November 9, 2003.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* September 1, 2015. FDA has verified the applicant's claim that the new drug application (NDA) for NUPLAZID (NDA 207–318) was initially submitted on September 1, 2015.

3. *The date the application was approved:* April 29, 2016. FDA has verified the applicant's claim that NDA 207–318 was approved on April 29, 2016.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,197 days, 1,256 days, or 1,316 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination

regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: October 17, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–23057 Filed 10–22–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3623]

Fostering Medical Innovation: Voluntary Pilot Program To Streamline Review of Premarket Notification (510(k)) Submissions for Ophthalmic Optical Coherence Tomography Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA) Center for Devices and Radiological Health, Office of Device Evaluation recognizes that an efficient, risk-based approach to regulating ophthalmic Optical Coherence Tomography (OCT) technology will foster innovation designed to improve ophthalmic healthcare. To make premarket review of OCT devices more efficient, we are announcing a new voluntary OCT Premarket Notification (510(k)) Pilot Program, designed to develop and refine individual premarket testing recommendations for OCT devices through the pre-submission process to yield more consistent premarket submissions and improve predictability of the 510(k) review process. We are planning to achieve these goals through increased interactive engagement with manufacturers of OCT devices. FDA intends to use the voluntary OCT 510(k) Pilot Program to assess whether the individual testing recommendations provided through the pre-submission process and increased interactive engagement improve the premarket review process and reduce the overall total time to decision (TTD), a shared FDA-industry commitment goal, in support of the Medical Device User Fee Amendments of 2017.

DATES: FDA is seeking participation in the voluntary OCT 510(k) Pilot Program beginning October 23, 2018. See the ''Voluntary OCT 510(k) Pilot Program Procedures'' section for instructions on how to submit a request to participate. The voluntary OCT 510(k) Pilot Program will select the first nine eligible participants.

FOR FURTHER INFORMATION CONTACT: Brad Cunningham, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2430, Silver Spring, MD 20993, 301–796–6620, email: *Bradley.Cunningham@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

OCT devices are devices for viewing, imaging, measurement, and analysis of ocular structures and may be used to aid in the detection and management of various ocular diseases. These devices are classified under 21 CFR 886.1570 and are assigned the product code OBO; they are Class II devices requiring premarket notification (510(k)) prior to marketing. In their 510(k) submission, for purposes of premarket clearance, manufacturers must demonstrate substantial equivalence to a legally marketed predicate in terms of intended use, technological characteristics, and performance. This is typically achieved through evaluation of non-clinical and/or clinical data, among other information.

Currently, there are no FDA-recognized consensus standards or published guidance documents available that describe performance testing recommendations for OCT devices. As such, 510(k) submissions, when initially submitted to FDA, often do not include adequate testing to support substantial equivalence. This is evidenced by consistent requests for additional information (including new data and analyses) across OCT 510(k) submissions, which are unforeseen by manufacturers and may greatly contribute to an increase in TTD for an individual 510(k) submission. Therefore, there is a need for a better understanding of premarket testing expectations for OCT devices and dialogue between FDA and OCT manufacturers in order to reduce the need for additional data requests during the 510(k) submission review.

II. Description of the Voluntary OCT 510(k) Pilot Program

FDA intends to achieve the goals of the voluntary OCT 510(k) Pilot Program, that are described in Section III, by: (1) Communicating and obtaining feedback related to individual recommendations regarding non-clinical and clinical evaluation of OCT devices; and (2) facilitating discussion between FDA and individual OCT device manufacturers regarding these risk-based testing recommendations. Specifically, participants in the voluntary OCT 510(k) Pilot Program will have the opportunity to discuss premarket performance testing recommendations for their OCT device in an interactive format (by phone or in-person meeting) with the FDA review team, including engineers, medical officers, and managers. FDA will interactively communicate and solicit feedback on its individual testing recommendations to yield a mutual, clear understanding of the information necessary to demonstrate substantial equivalence in a 510(k) submission for the OCT device and to streamline 510(k) submission and review.

Participation eligibility in this voluntary OCT 510(k) Pilot Program is determined based on the factors listed in Section IV. Due to resource constraints, we intend to limit this voluntary pilot program to the first nine eligible participants.

To evaluate success of the voluntary OCT 510(k) Pilot Program, we intend to assess 510(k) TTD and feedback on the pre-submission and 510(k) processes from participants in the pilot program.

This voluntary pilot program is limited to OCT devices, not already cleared for marketing through 510(k), which could be classified under 21 CFR 886.1570.

III. Goals of the Voluntary OCT 510(k) Pilot Program

FDA has the following goals for the voluntary OCT 510(k) Pilot Program:

1. Improve consistency and predictability of the 510(k) premarket review process for OCT devices.

2. Reduce TTD for OCT 510(k) submissions, noting that ''FDA and applicants share the responsibility for achieving this objective of reducing the average Total Time to Decision, while

maintaining standards for safety and effectiveness'' (Ref. 1).

3. Increase collaboration between FDA and individual manufacturers to refine non-clinical and/or clinical testing recommendations.

IV. Participation Eligibility

Eligibility for participation in the voluntary OCT 510(k) Pilot Program will be based on the following factors:

1. Intent to submit a Traditional 510(k) for an OCT device, that could be classified under 21 CFR 886.1570, within 1 year of acceptance to the voluntary OCT 510(k) Pilot Program.

2. Commitment to support an interactive review process and to respond interactively and in a timely manner, as requested, during the 510(k) review, including response to any FDA requests for additional information.

3. Based on pre-submission interactions, commitment to incorporate FDA feedback, including recommendations provided on the testing plan, into the testing that will be conducted to support the Traditional 510(k) submission.

At its discretion, FDA may withdraw a manufacturer from the OCT 510(k) Pilot Program for not carrying out any of the commitments mentioned previously.

V. Voluntary OCT 510(k) Pilot Program Procedures

A. Enrollment and Interaction for OCT Pre-submission

To be considered for the voluntary OCT 510(k) Pilot Program, an OCT device manufacturer should submit a ''statement of interest'' for participation to *bradley.cunningham@fda.hhs.gov.* The ''statement of interest'' should include the following: (1) Manufacturer's name and contact information; (2) explanation of why the manufacturer believes it meets the participation eligibility factors outlined in Section IV; and (3) the intended use (including indications for use) and critical technological characteristics of the OCT device for which a Traditional 510(k) will be submitted under the pilot program as well as the proposed predicate device.

The following captures the process for the enrollment and pre-submission phase of the voluntary OCT 510(k) Pilot Program:

1. Upon receiving a ''statement of interest,'' FDA will determine eligibility based on the factors outlined in Section IV.

2. FDA intends to notify the manufacturer via email whether the manufacturer is eligible and/or whether the manufacturer is enrolled as a participant in the voluntary OCT 510(k) Pilot Program. Based on the intended use and critical technological characteristics of the OCT device and the proposed predicate device, provided in the ''statement of interest,'' FDA also intends to provide initial feedback regarding testing (non-clinical and/or clinical) recommendations for the specific OCT device.

3. If eligible and enrolled as a participant, the OCT manufacturer should subsequently, yet in a timely manner (*e.g.,* three months from notification of enrollment as a participant), submit a pre-submission that includes applicable information recommended in FDA's Pre-submission guidance (Ref. 2), including specific questions for which the manufacturer is seeking FDA input, along with the proposed testing plan for its OCT device, after considering FDA's initial feedback, including recommendations, provided in response to the ''statement of interest.''

4. During the pre-submission phase of the pilot program, FDA intends to provide feedback on the proposed testing plan and any specific questions included in the pre-submission within 35 calendar days. In addition, and if requested by the manufacturer, FDA intends to schedule a meeting to occur within one week after issuing feedback to the manufacturer during the pre-submission phase to clarify or discuss alternative testing approaches. As a goal of the pilot program is to positively impact and reduce TTD for OCT 510(k) submissions, FDA expects that the OCT manufacturer will implement the testing plan, including any modifications to the plan based on feedback and dialogue, discussed during this pre-submission phase, during development of the 510(k) submission. FDA welcomes feedback on our testing recommendations as part of the voluntary OCT 510(k) Pilot Program. We recognize that manufacturers may propose appropriate alternatives to FDA recommendations, and we intend to provide feedback on any proposed alternatives in the context of a pre-submission submitted per Section V.A., as part of the pilot program.

B. Refuse To Accept (RTA) and Substantive 510(k) Review for OCT 510(k)s

Once the 510(k) for an OCT device enrolled in the voluntary OCT 510(k) Pilot Program is received by FDA, it will be screened to assess whether it meets a minimum threshold of acceptability for substantive review, as described in FDA's guidance on its Refuse to Accept (RTA) Policy for 510(k)s (Ref. 3). As stated in this guidance, ''[a]n acceptance review will only begin for 510(k) submissions for which the appropriate user fee has been paid and a validated eCopy has been received.'' As recommended in the guidance, the 510(k) should include a separate section with information on the pre-submission under Section V.A., including the pre-submission number, a copy of the FDA feedback (*e.g.,* letter, meeting minutes), and a statement of how or where in the 510(k) this prior feedback, including each of the testing recommendations, was addressed. Consistent with FDA's RTA policy as described in the guidance, FDA intends to complete the acceptance review for the 510(k) submission within 15 calendar days.

Once the OCT 510(k) has been accepted for review, FDA intends to complete review of the 510(k) submission within a TTD of 90 calendar days. To help achieve this, during the 510(k) review, FDA intends to resolve any identified deficiencies through an interactive process without placing the OCT 510(k) submission on hold. Consistent with the participation eligibility factors under Section IV, FDA expects manufacturers to provide timely responses to FDA in response to deficiencies identified as part of an interactive review process. To facilitate FDA-industry interaction, we will provide a ''point of contact'' to ensure open, continual interaction during the review process. Through the ''point of contact'' person, the participants will be able to communicate with the FDA review team (which intends to respond within two business days) to expeditiously address any issues related to the 510(k) submission. FDA will evaluate the 510(k) consistent with existing 510(k) review processes and procedures, including those outlined in FDA's 510(k) Program Guidance (Ref. 4).

C. Assessment of the Voluntary OCT 510(k) Pilot Program

Following completion of the review of 510(k)s in the voluntary OCT 510(k) Pilot Program, participating manufacturers will have the opportunity to provide individual feedback on the voluntary OCT 510(k) Pilot Program and its impact on consistency and predictability of the 510(k) review process and FDA/manufacturer collaboration during the pilot program. FDA intends to solicit feedback from pilot program participants electronically through an email questionnaire. TTD will also be evaluated.

VI. Duration of the OCT 510(k) Pilot Program

FDA intends to accept requests for participation in the voluntary OCT 510(k) Pilot Program from the date of publication in the **Federal Register** through one year, or until the time when a total of nine participants have been enrolled.

VII. Paperwork Reduction Act of 1995

This notice refers to previously approved collections of information found in FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120. The collections of information in ''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff'' have been approved under OMB control number 0910–0756.

VIII. References

The following references are on display at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. MDUFA IV Commitment Letter, available at *https://www.fda.gov/downloads/ForIndustry/UserFees/MedicalDeviceUserFee/UCM535548.pdf.*
2. FDA Guidance for Industry and FDA Staff ''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff'' dated September 29, 2017, available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM311176.*
3. FDA Guidance for Industry and FDA Staff ''Refuse to Accept Policy for 510(k)s'' dated January 30, 2018, available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM315014.*
4. FDA Guidance for Industry and FDA Staff ''The 510(k) Program: Evaluating Substantial Equivalence in Premarket Notifications [510(k)]'' dated July 28, 2014, available at: *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM284443.*

Dated: October 17, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–23059 Filed 10–22–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1533]

Agency Information Collection Activities; Proposed Collection; Comment Request; National Panel of Tobacco Consumer Studies

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the National Panel of Tobacco Consumer Studies.

DATES: Submit either electronic or written comments on the collection of information by December 24, 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 December 24, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 24, 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–2014–N–1533 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; National Panel of Tobacco Consumer Studies.'' 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: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

National Panel of Tobacco Consumer Studies

OMB Control Number 0910–0815—Extension

I. Background

FDA's Center for Tobacco Products (CTP) established a national, primarily web-based panel of about 4,000 tobacco users. The panel includes individuals who can participate in up to eight studies over a 3-year period to assess consumers' responses to tobacco marketing, warning statements, product labels, and other communications about tobacco products. CTP established the panel of consumers because currently existing panels have a number of significant limitations. First, many existing consumer panels are drawn from convenience samples that limit the generalizability of study findings (Ref. 1). Second, although at least two probability-based panels of consumers exist in the United States, there is a concern that responses to the studies using tobacco users in these panels may be biased due to panel conditioning effects (Refs. 2 and 3). That is, consumers in these panels complete surveys so frequently that their responses may not adequately represent the population as a whole. Panel conditioning has been associated with repeated measurement on the same topic (Ref. 4), panel tenure (Ref. 2), and frequency of the survey request (Ref. 3). This issue is of particular concern for tobacco users who represent a minority of the members in the panels, and so may be more likely to be selected for participation in experiments and/or surveys related to tobacco products. Third, a key benefit of the web panel approach is that the surveys can include multimedia, such as images of tobacco product packages, tobacco advertising, new and existing warning statements and labels, and potential reduced harm claims in the form of labels and print advertisements. Establishing a primarily web-based panel of tobacco users through in-person probability-based recruitment of eligible adults and limiting the number of times individuals participate in tobacco-related studies will result in nationally representative and unbiased data collection on matters of importance for FDA.

With this submission, FDA seeks an extension on the currently approved information collection request from OMB for remaining planned panel maintenance and replenishment activities for the National Panel of Tobacco Consumer Studies. Data collection activities will involve mail and in-person household screening, in-person recruitment of tobacco users, enrollment of selected household members, and administration of a baseline survey, following all required informed consent procedures for panel members. Panel members will be asked to participate in up to eight experimental and observational studies over the 3-year panel commitment period. The first of these panel studies, Study A ''Brands and Purchasing Behavior,'' was included in the currently approved information collection request; approval for Studies B, C, and D are included in this extension request. The first of these panel studies, Study A ''Brands and Purchasing Behavior,'' was included in the currently approved information collection request. Study B ''Coupons and Free Samples,'' Study C ''Consumer Perceptions of Product Standards,'' and Study D ''Hypothetical Purchasing of Tobacco Products'' are included in this request for extension. Study B will be an observational study offered to all panelists that will provide a more in-depth examination of tobacco product promotions, namely free samples and coupons, after the ban on distribution of free samples of tobacco products (with the exception of certain smokeless tobacco exemptions) that went into effect when FDA finalized the ''Deeming Rule'' on August 8, 2016 (published May 10, 2016 (81 FR 28973)) that extended FDA's regulatory authority to all tobacco products. Study C will be an experimental study examining how a hypothetical tobacco product standard may impact consumers' perceptions, attitudes, and tobacco use behavioral intentions. Study D will be an experimental study using behavioral economic methods that seeks to understand how the availability or lack of availability of menthol cigarettes potentially impacts adult cigarette smokers' product purchasing choices. The current request also seeks approval to update the estimated burden for an additional year of panel replenishment. The overall purpose of the data collection is to collect information from

a national sample of tobacco users to provide data that may be used to develop and support FDA's policies related to tobacco products, including their labels, labeling, and advertising.

The target population for the panel is tobacco users aged 18 years and older in housing units and in noninstitutionalized group quarters in the 50 states and the District of Columbia. A stratified four-stage sample design was used, with a goal of recruiting 4,000 adult tobacco users into the sample panel. The sample is designed to allow in-depth analysis of subgroups of interest and to the extent possible, provide insight into tobacco users more generally. Replenishment will be conducted to maintain the panel with a constant number of members following existing panel recruitment and enrollment methods.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/respondent	No. of respondents	No. of responses per respondent [2]	Total annual responses [3]	Average burden per response	Total hours [3]
Household Screening Respondent [4]	35,885	0.33	11,842	0.13 (8 minutes)	1,539
Panel Member Enrollment Survey	4,000	0.33	1,320	0.25 (15 minutes)	330
Panel Member Baseline Survey		0.33	1,320	0.25 (15 minutes)	330
Study A		0.33	1,320	0.33 (20 minutes)	436
Study B		0.33	1,320	0.33 (20 minutes)	436
Study C		0.33	1,320	0.33 (20 minutes)	436
Study D		0.33	1,320	0.33 (20 minutes)	436
Panel Replenishment Household Screening Respondent.	30,855	0.33	10,182	0.13 (8 minutes)	1,324
Panel Replenishment Enrollment Survey [5].	4,200	0.33	1,386	0.25 (15 minutes)	347
Panel Replenishment Baseline Survey [5]		0.33	1,386	0.25 (15 minutes)	347
Total					5,961

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Assumes respondents will participate once over a 3-year period, or 0.33 responses annually.
[3] Amounts are rounded to the nearest whole number.
[4] Includes both mail and field screening.
[5] Assumes 1,400 additional panel members will be recruited annually (4,200 total) as part of the panel replenishment effort.

FDA's burden estimate is based on timed-readings of each instrument, including the mail and field screeners, enrollment survey, baseline survey, and Study A–D questionnaires. Of the total screening respondents, we expect 25 percent will respond only in the mail screening (household deemed ineligible), 65 percent will respond only in the field screening (mail screening nonrespondents), and the remaining 10 percent will respond in both the mail screening and the field screening. The latter includes eligible households from the mail screening that are subsequently field-screened to sample the panel member, and the 10 percent quality control sample of households whose mail screening ineligibility is verified through in-person screening. This assumes an estimated 10,285 household screening respondent during yearly panel replenishment (30,855 total). Replenishment panel members replace original panel members and become part of the 4,000-member panel that receives experimental/observational and panel maintenance surveys. This extension reflects an increase of 1,527 hours due to an additional year of panel replenishment and fielding of Studies B, C, and D. The estimated burden assumes 10,285 household screening respondents during yearly panel replenishment (30,855 total) and 1,400 additional panel members recruited annually (4,200 total) as part of the panel replenishment effort.

II. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Baker, R., Blumberg, S., Brick, M., et al., 2010, ''American Association for Public Opinion Research Report on Online Panels.'' *Public Opinion Quarterly,* 74(4), pp. 711–781.
2. Coen, T., Lorch, J. and Piekarski, L., 2005, ''The Effects of Survey Frequency on Panelists' Responses. Worldwide Panel Research: Developments and Progress,'' Amsterdam, European Society for Opinion and Marketing Research.
3. Nancarrow, C. and Catwright, T., 2007, ''Online Access Panels and Tracking Research, The Conditioning Issue,'' *International Journal of Market Research,* 49(5), pp. 435–447.
4. Kruse, Y., Callegaro, M., Dennis, J. M., et al., 2009, Panel Conditioning and Attrition in the AP-Yahoo! News Election Panel Study, Paper presented at the American Association for Public Opinion Research 64th Annual Conference.

Dated: October 17, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–23060 Filed 10–22–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Children's Graduate Medical Education Quality Bonus System (QBS) Initiative Response Form, OMB No. 0906–xxxx–New

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection

Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR must be received no later than December 24, 2018.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Quality Bonus System Initiative Response Form OMB No. 0906–xxxx [New].

Abstract: The Children's Hospitals Graduate Medical Education (CHGME) Payment Program provides federal funds to the nation's freestanding children's hospitals to help them maintain their graduate medical education (GME) programs that train resident physicians and dentists. CHGME Support Reauthorization Act of 2013 states that the Secretary may establish a Quality Bonus System (QBS), whereby the Secretary distributes bonus payments to hospitals participating in the CHGME program that meet standards specified by the Secretary. In order to qualify for the QBS payment in Fiscal Year (FY) 2019, CHGME award recipients must submit documentation as an attachment in the FY 2019 reconciliation application released in April 2019, describing the hospital's initiatives, resident curriculum, and direct resident involvement in the following areas:

a. Integrated care models (*e.g.,* integrated behavioral and mental health, care coordination across providers and settings);

b. Telehealth and/or Health Information Technology;

c. Population health;

d. Social determinants of health; and

e. Additional initiatives to improve access and quality of care to rural and/or underserved communities.

As specified in the CHGME statute, the QBS payment shall be remitted to qualified hospitals participating in the CHGME program that meet standards set forth by the Secretary of HHS. To demonstrate the fulfillment of such standards, it will be necessary for applicants to complete the QBS Response Initiative form and submit it as an attachment to the FY 2019 reconciliation application released in April of 2019. This form will be used to gather information relating to the hospitals' engagement in quality initiatives.

Likely Respondents: CHGME Program award recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
QBS Response Initiative Form	58	1	58	32.41	1,880
Total	58		58		1,880

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Amy P. McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2018–23133 Filed 10–22–18; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of an Interagency Pain Research Coordinating Committee (IPRCC) meeting.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Interagency Pain Research Coordinating Committee.

Date: November 16, 2018.

Time: 8:30 a.m. to 5:00 p.m. *Eastern Time*—Approximate end time.

Agenda: The meeting will include discussions of committee business items including an updated Federal Pain Portfolio Analysis, an update on the Federal Pain Research Strategy and information about the NIH HEAL Initiative.

Place: National Institutes of Health, Building 35 A, Porter Neuroscience Center, Room 620/630, 35 Convent Drive, Bethesda, MD 20892.

Webcast Live: http://videocast.nih.gov/.

Deadlines: Submission of intent to submit written/electronic statement for comments: Friday, November 2, 2018. Submission of written/electronic statement for oral comments: Friday, November 9, 2018.

Contact Person: Linda L. Porter, Ph.D., Director, Office of Pain Policy & Planning, Office of the Director, National Institute of

Neurological Disorders and Stroke, NIH, 31 Center Drive, Room 8A31, Bethesda, MD 20892, Phone: (301) 451–4460, Email: *Linda.Porter@nih.gov*.

Please Note: Any member of the public interested in submitting written comments to the Committee must notify the Contact Person listed on this notice by 5:00 p.m. ET on Friday, November 2, 2018, with their request. Interested individuals and representatives of organizations must submit a written/electronic copy of the oral statement/comments including a brief description of the organization represented by 5:00 p.m. ET on Friday, November 9, 2018. Statements submitted will be shared with the committee members and become a part of the public record.

The meeting will be open to the public and accessible by live Webcast. Individuals who participate in person or by using these electronic services and who need special assistance, such as captioning or other reasonable accommodations, should submit a request to the Contact Person listed on this notice at least seven days prior to the meeting.

As a part of security procedures, attendees should be prepared to present a photo ID during the security process to get on the NIH campus. For a full description, please see: *http://www.nih.gov/about/visitorsecurity.htm.*

Information about the IPRCC is available on the website: *http://iprcc.nih.gov/.*

Dated: October 16, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–23032 Filed 10–22–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; NIA AD/ADRD Research Collaboratory.

Date: November 20, 2018.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Isis S. Mikhail, MD, MPH, DRPH, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7704, *mikhaili@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 17, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–23068 Filed 10–22–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; 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 Eye Institute Special Emphasis Panel; Secondary Data Analysis (R21) Grant Applications.

Date: November 19, 2018.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Brian Hoshaw, Ph.D., Scientific Review Officer, National Eye Institute, National Institutes of Health, Division of Extramural Research, 5635 Fishers Lane, Suite 1300, Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 17, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–23034 Filed 10–22–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Dr. Vince Contreras, 240–669–2823; *vince.contreras@nih.gov.* Licensing information and copies of the U.S. patent application listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Fusion Glycoprotein Vaccine for Human Metapneumovirus

Description of Technology: Human metapneumovirus (hMPV), a negative, single-stranded RNA virus, accounts for approximately 5–15% of infant respiratory tract infections and poses a severe risk of disease and hospitalization in both the elderly and the immunocompromised. Investigators at the Vaccine Research Center (VRC) of the National Institute of Allergy and Infectious Diseases (NIAID) have generated an hMPV fusion glycoprotein (''F protein'') stabilized in a prefusion conformation.

Stabilizing this prefusion conformation of the F protein reveals an immunodominant site which makes it an ideal vaccine immunogen. The

prefusion stabilized F protein immunogen can be delivered as either an isolated homotrimer or trimers displayed on a nanoparticle. These immunogens elicit broad and potent hMPV-neutralizing antibodies.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404.

Potential Commercial Applications:

- Vaccine for prevention of human metapneumovirus infection

Competitive Advantages:

- No human metapneumovirus vaccine is currently available

Development Stage:

- In vitro data available
- In vivo animal data available

Inventors: Peter D. Kwong, (NIAID), Michael Gordon Joyce (NIAID), Peter L. Collins (NIAID), Ursula J. Buchholz (NIAID), Guillaume Stewart-Jones (NIAID), Baoshan Zhang (NIAID), Yongping Yang (NIAID), Davide Corti (Institute for Research in Biomedicine), Antonio Lanzavecchia (Institute for Research in Biomedicine).

Intellectual Property: HHS Reference Number E–260–2014 includes U.S. Provisional Patent Application No. 62/096,744, filed December 24, 2014; PCT Application No. PCT/IB2015/059991, filed December 24, 2015; U.S. Patent Application No 15/539,640 filed June 23, 2017; EPO Patent Application No. 15831073.0, filed 21 July 2017.

Licensing Contact: Dr. Vince Contreras, 240–669–2823; *vince.contreras@nih.gov.*

Dated: October 10, 2018.

Suzanne M. Frisbie,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2018–23066 Filed 10–22–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, October 17, 2018, 09:00 a.m. to October 17, 2018, 01:00 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on September 20, 2018, 83 FR 47634.

The meeting notice is amended to change the date of the meeting from October 17, 2018 to October 17–18, 2018. The meeting is closed to the public.

Dated: October 17, 2018.

Melanie J. Pantoja,

Program Analyst,Office of Federal Advisory Committee Policy.

[FR Doc. 2018–23067 Filed 10–22–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: AIDS and Related Research Integrated Review Group; Population and Public Health Approaches to HIV/AIDS Study Section.

Date: November 8–9, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Suites—Old Town Alexandria, 801 N Saint Asaph St., Alexandria, VA 22314.

Contact Person: Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AIDS and Related Research.

Date: November 9, 2018.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Barna Dey, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, Bethesda, MD 20892, 301–451–2796, *bdey@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Radiation Therapeutics and Biology.

Date: November 14, 2018.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nicholas J. Donato, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040, Bethesda, MD 20892, 301–827–4810, *nick.donato@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cardiovascular and Surgical Devices.

Date: November 15–16, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Jan Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, 301.402.9607, *Jan.Li@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Instrumentation, Environmental, and Occupational Safety.

Date: November 15–16, 2018.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Marie-Jose Belanger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 6188 MSC 7804, Bethesda, MD 20892, 301–435–1267, *belangerm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Respiratory Sciences.

Date: November 15–16, 2018.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Animal/Biological and Related Resources.

Date: November 15, 2018.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Baishali Maskeri, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2022,

Bethesda, MD 20892, 301–827–2864, *maskerib@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biobehavioral Applications in Ethology and Substance Abuse.

Date: November 15, 2018.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 455–1761, *kellya2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA Application Review.

Date: November 19, 2018.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Katherine M. Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0912, *Katherine_Malinda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA Application Review.

Date: November 19, 2018.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 17, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–23035 Filed 10–22–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Diabetes, Endocrinology and Metabolic Diseases B Subcommittee, October 24, 2018, 05:30 p.m. to October 26, 2018, 04:00 p.m., Residence Inn Capital View, 2850 South Potomac Avenue, Arlington, VA, 22202 which was published in the **Federal Register** on September 12, 2018, 64 FR 46178.

The meeting is being amended to reflect location change. The new meeting location is the Renaissance Washington DC Downtown, 999 9th Street NW, Washington, DC 20001. The meeting is closed to the public.

Dated: October 17, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–23033 Filed 10–22–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–2: NCI Clinical and Translational R21 and Omnibus R03.

Date: November 7, 2018.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W112, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Jennifer C. Schiltz, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W112, Bethesda, MD 20892–9750, 240–276–5864, *jennifer.schiltz@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Collaborative Human Tissue Network (CHTN) (UM1).

Date: November 14, 2018.

Time: 10:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W122, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Sanita Bharti, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W122, Bethesda, MD 20892–9750, 240–276–5909, *sanitab@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SBIR Phase IIB Bridge Awards.

Date: November 15, 2018.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W114, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W114, Bethesda, MD 20892–9750, 240–276–6371, *decluej@mail.nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group Subcommittee A—Cancer Centers.

Date: November 29, 2018.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Shamala K. Srinivas, Ph.D., Scientific Review Officer, Office of Referral, Review, and Program Coordination, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W530, Bethesda, MD 20892–9750, 240–276–6442, *ss537t@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Center Support Grant (P30).

Date: November 29, 2018.

Time: 4:30 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Shamala K. Srinivas, Ph.D., Scientific Review Officer, Office of Referral, Review, and Program Coordination, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center

Drive, Room 7W530, Bethesda, MD 20892–9750, 240–276–6442, *ss537t@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 17, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–23069 Filed 10–22–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Frederick National Laboratory Advisory Committee to the National Cancer Institute, October 29, 2018, 09:30 a.m. to October 29, 2018, 04:30 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, TE406, Rockville, MD, 20850 which was published in the **Federal Register** on October 11, 2018, 83 FR 51468.

The meeting notice is amended to change the start and end time of the meeting from 9:30 a.m.–4:30 p.m. to 9:00 a.m.–4:00 p.m. on October 29, 2018. The meeting is open to the public.

Dated: October 17, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–23070 Filed 10–22–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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.

Proposed Project: Community Mental Health Services Block Grant and Substance Abuse Prevention and Treatment Block Grant FY 2020–2021 Plan and Report Guidance and Instructions (OMB No. 0930–0168)—Extension

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting approval from the Office of Management and Budget (OMB) for an extension of the 2018–19 Community Mental Health Services Block Grant (MHBG) and Substance Abuse Prevention and Treatment Block Grant (SABG) Plan and Report Guidance and Instructions.

Currently, the SABG and the MHBG differ on a number of their practices (*e.g.,* data collection at individual or aggregate levels) and statutory authorities (*e.g.,* method of calculating MOE, stakeholder input requirements for planning, set asides for specific populations or programs, etc.). Historically, the Centers within SAMHSA that administer these block grants have had different approaches to application requirements and reporting. To compound this variation, states have different structures for accepting, planning, and accounting for the block grants and the prevention set aside within the SABG. As a result, how these dollars are spent and what is known about the services and clients that receive these funds varies by block grant and by state.

SAMHSA has conveyed that block grant funds must be directed toward four purposes: (1) To fund priority treatment and support services for individuals without insurance or who cycle in and out of health insurance coverage; (2) to fund those priority treatment and support services not covered by Medicaid, Medicare or private insurance offered through the exchanges and that demonstrate success in improving outcomes and/or supporting recovery; (3) to fund universal, selective and targeted prevention activities and services; and (4) to collect performance and outcome data to determine the ongoing effectiveness of behavioral health prevention, treatment and recovery support services and to plan the implementation of new services on a nationwide basis.

To help states meet the challenges of 2020 and beyond, and to foster the implementation and management of an integrated physical health, mental health and addiction service system, SAMHSA has established standards and expectations that will lead to an improved system of care for individuals with or at risk of mental and substance use disorders. Therefore, this application package continues to fully exercise SAMHSA's existing authority regarding states', territories' and the Red Lake Band of the Chippewa Tribe's (subsequently referred to as ''states'') use of block grant funds as they fully integrate behavioral health services into the broader health care continuum.

Consistent with previous applications, the FY 2020–2021 application has sections that are required and other sections where additional information is requested. The FY 2020–2021 application requires states to submit a face sheet, a table of contents, a behavioral health assessment and plan, reports of expenditures and persons served, an executive summary, and funding agreements and certifications. In addition, SAMHSA is requesting information on key areas that are critical to the states success in addressing health care integration. Therefore, as part of this block grant planning process, SAMHSA is asking states to identify both their promising or effective strategies as well as their technical assistance needs to implement the strategies they identify in their plans for FYs 2020 and 2021.

To facilitate an efficient application process for states, SAMHSA utilized the questions and requests for clarification from representatives from SMHAs and SSAs to inform the proposed changes to the block grants. Based on these discussions with states, SAMHSA is proposing de minimis changes to the block grant program, consisting of updated dates and clarification to instructions.

While the statutory deadlines and block grant award periods remain unchanged, SAMHSA encourages states to turn in their application as early as

possible to allow for a full discussion and review by SAMHSA. Applications for the MHBG-only is due no later than September 3, 2019. The application for SABG-only is due no later than October 1, 2019. A single application for MHBG *and* SABG combined is due no later than September 3, 2019.

Estimates of Annualized Hour Burden

The estimated annualized burden for the uniform application remains unchanged at 33,374 hours. Burden estimates are broken out in the following tables showing burden separately for Year 1 and Year 2. Year 1 includes the estimates of burden for the uniform application and annual reporting. Year 2 includes the estimates of burden for the recordkeeping and annual reporting. The reporting burden remains constant for both years.

TABLE 1—ESTIMATES OF APPLICATION AND REPORTING BURDEN FOR YEAR 1

	Authorizing legislation SABG	Authorizing legislation MHBG	Implementing regulation	Number of respondent	Number of responses per year	Number of hours per response	Total hours
Substance Abuse Prevention and Treatment and Community Mental Health Services Block Grants							
Reporting	Standard Form and Content.						
	42 U.S.C. § 300x–32(a).						
SABG	Annual Report						11,160
	42 U.S.C. 300x–52(a).		45 CFR 96.122(f).	60	1		
	42 U.S.C. 300x–30–b.			5	1		
	42 U.S.C. 300x–30(d)(2).		45 CFR 96.134(d).	60	1		
MHBG	Annual Report						10,974
		42 U.S.C. § 300x–6(a).		59	1		
		42 U.S.C. 300x–52(a).					
		42 U.S.C. 300x–4(b)(3)B.		59	1		
	State Plan (Covers 2 years).						
SABG elements	42 U.S.C. 300x–22(b).		45 CFR 96.124(c)()1).	60	1		
	42 U.S.C. 300x–23.		45 CFR 96.126(f).	60	1		
	42 U.S.C. 300x–27.		45 CFR 96.131(f).	60	1		
	42 U.S.C. 300x–32(b).		45 CFR 96.122(g).	60	1	120	7,200
MHBG elements		42 U.S.C. 300x–1(b).		59	1	120	7,080
		42 U.S.C. 300x–1(b)(2).		59	1		
		42 U.S.C. 300x–2(a).		59	1		
	Waivers						3,240
	42 U.S.C. 300x–24(b)(5)(B).			20	1		
	42 U.S.C. 300x–28(d).		45 CFR 96.132(d).	5	1		
	42 U.S.C. 300x–30(c).		45 CFR 96.134(b).	10	1		
	42 U.S.C. 300x–31(c).			1	1		
	42 U.S.C. 300x–32(c).			7	1		
	42 U.S.C. 300x–32(e).			10			
		42 U.S.C. 300x–2(a)(2).		10			
		42 U.S.C 300x–4(b)(3).		10			
		42 U.S.C 300x–6(b).		7			
Recordkeeping	42 U.S.C. 300x–23.	42 U.S.C. 300x–3.	45 CFR 96.126(c).	60/59	1	20	1,200
	42 U.S.C. 300x–25.		45 CFR 96.129(a)(13).	10	1	20	200

TABLE 1—ESTIMATES OF APPLICATION AND REPORTING BURDEN FOR YEAR 1—Continued

	Authorizing legislation SABG	Authorizing legislation MHBG	Implementing regulation	Number of respondent	Number of responses per year	Number of hours per response	Total hours
	42 U.S.C 300x–65.	.....	42 CFR Part 54	60	1	20	1,200
Combined Burden.	.....	.....	.....	.....	.....	.....	42,254

Report

300x–52(a)—Requirement of Reports and Audits by States—Report
300x–30(b)—Maintenance of Effort Regarding State Expenditures—Exclusion of Certain Funds (SABG)
300x–30(d)(2)—Maintenance of Effort—Noncompliance—Submission of Information to Secretary (SABG)
State Plan—SABG
300x–22(b)—Allocations for Women
300x–23—Intravenous Substance Abuse
300x–27—Priority in Admissions to Treatment
300x–29—Statewide Assessment of Need
300x–32(b)—State Plan
State Plan—MHBG
42 U.S.C. 300x–1(b)—Criteria for Plan
42 U.S.C. 300x–1(b)(2)—State Plan for Comprehensive Community Mental Health Services for Certain Individuals—Criteria for Plan—Mental Health System Data and Epidemiology
42 U.S.C. 300x–2(a)—Certain Agreements—Allocations for Systems Integrated Services for Children
Waivers—SABG
300x–24(b)(5)(B)—Human Immunodeficiency Virus—Requirement regarding Rural Areas
300x–28(d)—Additional Agreements
300x–30(c)—Maintenance of Effort
300x–31(c)—Restrictions on Expenditure of Grant—Waiver Regarding Construction of Facilities
300x–32(c)—Certain Territories
300x–32(e)—Waiver amendment for 1922, 1923, 1924 and 1927
Waivers—MHBG
300x–2(a)(2)—Allocations for Systems Integrated Services for Children
300x–6(b)—Waiver for Certain Territories

Recordkeeping

300x–23—Waiting list
300x–25—Group Homes for Persons in Recovery from Substance Use Disorders
300x–65—Charitable Choice

TABLE 2—ESTIMATES OF APPLICATION AND REPORTING BURDEN FOR YEAR 2

	Number of respondent	Number of responses per year	Number of hours per response	Total hours
Reporting:	.....	.....	.....	.....
	.....	.....	.....	.....
SABG	60	1	186	11.160
MHBG	59	1	186	10,974
	.....	.....	.....	.....
Recordkeeping	60/59	1	40	2,360
Combined Burden	.....	.....	.....	24,494

The total annualized burden for the application and reporting is 33,374 hours (42,254 + 24,494 = 66,748/2 years = 33,374).

Link for the application: *http://www.samhsa.gov/grants/block-grants*

Send all comments via email to *blockgrants@samhsa.hhs.gov.* Comments should be received by December 24, 2018.

Summer King,

Statistician.

[FR Doc. 2018–23134 Filed 10–22–18; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–0878]

Commercial Fishing Safety Advisory Committee

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Commercial Fishing Safety Advisory Committee will meet in Seattle, Washington to discuss various issues relating to safety in the commercial fishing industry. All meetings will be open to the public.

DATES:

Meetings: The Committee will meet on Thursday, November 15 from 10 a.m. to 5 p.m., and on Friday, November 16, 2018 from 8 a.m. to 5 p.m. The meeting may close early if all business is finished.

Comments and supporting documentation: To ensure your comments are reviewed by Committee members before the meetings, submit your written comments no later than November 7, 2018.

ADDRESSES: The Committee will meet at the United States Federal Center South at 4735 East Marginal Way South, Seattle, Washington, 98134.

If you are planning to attend the meeting, you will be required to pass through a security checkpoint. You will be required to show valid government identification. Please arrive at least 30 minutes before the planned start of the meeting in order to pass through security.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section, as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meetings, but if you want Committee members to review your comments before the meeting, please submit your comments no later than November 7, 2018. We are particularly interested in the comments on the issues in the ''Agenda'' section below. You must include ''Department of Homeland Security'' and the docket number USCG–2018–0878. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. For more information about the privacy and docket, review the Privacy and Security Notice for the Federal Docket Management System at *https://regulations.gov/privacyNotice*.

Docket Search: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov,* and use the docket number in the ''SEARCH'' box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Myers, Alternate Designated Federal Officer for the Commercial Fishing Safety Advisory Committee, Commandant (CG–CVC–3), United States Coast Guard Headquarters, 2703 Martin Luther King Junior Avenue, South East, Mail Stop 7501, Washington, DC 20593–7501; telephone 202–372–1249, facsimile 202–372–8385, electronic mail: *joseph.d.myers@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act,* Title 5 U.S.C., Appendix.

The Commercial Fishing Safety Advisory Committee is authorized by Title 46 United States Code Section 4508. The Committee's purpose is to provide advice and recommendations to the United States Coast Guard and the Department of Homeland Security on matters relating to the safe operation of commercial fishing industry vessels.

Agenda

The Commercial Fishing Safety Advisory Committee will meet to review and discuss topics contained in the agenda.

Day 1

The meeting will include, reports, presentations, discussions, as follows:

(1) 10 a.m. Introductions, swearing-in of new members, election of Chair and Vice-Chair.

(2) Status of Commercial Fishing Vessel Safety Rulemaking projects resulting from requirements set forth in the U.S. Coast Guard Authorization Act of 2010 and the U.S. Coast Guard and Maritime Transportation Act of 2012.

(3) U.S. Coast Guard District Commercial Fishing Vessel Safety Coordinator reports on activities and initiatives.

(4) Industry Updates.

(5) U.S. Coast Guard/National Oceanic Atmospheric Administration National Marine Fisheries Service, Memorandum of Agreement Charter update.

(6) Presentation and discussion on casualties, by regions and fisheries, and an update on safety and risk-reduction-related projects by the National Institute for Occupational Safety and Health.

(7) Discussion on Fire Extinguishers and Survival Craft.

(8) Public Comment Period.

(9) Adjournment of meeting.

Day 2

The meeting will primarily be dedicated to information passing to include the topics:

(1) U.S. Coast Guard/National Institute for Occupational Safety and Health Training and research grant programs.

(2) Update on Training Requirements for Operators 46 U.S.C. 4502(g) and 4502(g)(3).

(3) New Construction option for vessels 50–79 feet under Title 46 U.S.C section 4503.

(4) STCW–F International Maritime Organization summary update.

(5) Automatic and Identification System and ''Fish Pingers''.

(6) Global Maritime Distress Safety System update.

(7) Discussion on Presidential Executive Orders 13771 and 13783 De-Regulation Project.

(8) Discussion and Final comments from public.

(9) Discussion and motions from the Committee.

(10) Future plans and goals for the Committee.

(11) Next Committee meeting, plans and recommended location.

(12) Comments on the meeting from Committee members.

(13) Adjournment of meeting.

Public oral comment periods will be held during the meeting after each presentation and at the end of each day. Speakers are requested to limit their comments to 3 minutes. Please note that the public oral comment periods may end before the prescribed ending time following the last call for comments. Contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

A copy of available meeting documentation will be posted to the docket, as noted above, and at *https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Inspections-Compliance-CG-5PC-/Commercial-Vessel-Compliance/Fishing-Vessel-Safety-Division/cfsac/* by October 29, 2018. Post-meeting documentation will be posted to the website, noted above, within 30 days after the meeting, or as soon as possible.

Dated: October 17, 2018.

Jennifer F. Williams,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2018–23061 Filed 10–22–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–ES–2018–N113; FXES11140700000–178–FF07CAAN00]

Endangered and Threatened Wildlife and Plants; Initiation of a 5-Year Status Review of the Wood Bison

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are initiating a 5-year status review of the wood bison under the Endangered Species Act (ESA). A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any new information on this species that has become available since the species was reclassified under the ESA as threatened throughout its range, in 2012.

DATES: To ensure consideration of your comments in our preparation of this 5-year status review, we must receive your comments and information by December 24, 2018. However, we will accept information about the species at any time.

ADDRESSES: Please submit your information by one of the following methods:

- *Email: kevin_foley@fws.gov;* or
- *U.S. mail or hand delivery:* U.S. Fish and Wildlife Service, Attn: Wood Bison, 4700 BLM Road, Anchorage, AK 99507.

For more about submitting information, see Request for Information in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kevin Foley, Anchorage Fish and Wildlife Conservation Office, by telephone at 907–271–2788. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), are initiating a 5-year status review of the wood bison (*Bison bison athabascae*) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any new information on this species that has become available since the species was reclassified under the ESA as threatened throughout its range, in 2012.

Why do we conduct 5-year reviews?

Under the ESA, we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires us to review each listed species' status at least once every 5 years. Further, our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review. For additional information about 5-year reviews, go to *http://www.fws.gov/endangered/what-we-do/recovery-overview.html,* scroll down to ''Learn More about 5-Year Reviews,'' and click on the ''5-Year Reviews'' link.

What information do we consider in our review?

In conducting these reviews, we consider the best scientific and commercial data that have become available since the listing determination or most recent status review, such as:

(1) The biology of the species, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(2) Habitat conditions, including but not limited to amount, distribution, and suitability;

(3) Conservation measures that have been implemented that benefit the species;

(4) Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the ESA); and

(5) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5-year review and will also be useful in evaluating the ongoing recovery programs for the species.

Species Under Review

Entity listed: Wood bison (*Bison bison athabascae*).

Where listed: Wherever found.

Classification: Threatened.

Date listed (publication date for final listing rule): June 2, 1970.

Federal Register *citation for final listing rule:* 35 FR 8491.

Request for Information

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. See What Information Do We Consider in Our Review? for specific criteria. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources. If you submit purported sightings of the species, please also provide supporting documentation in any form to the extent that it is available.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, 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.

Completed and Active Reviews

A list of all completed and currently active 5-year reviews addressing species for which the Alaskan Region of the Service has lead responsibility is available at *http://www.fws.gov/alaska/fisheries/endangered/reviews.htm.*

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 10, 2018.

Mary Colligan,

Assistant Regional Director, Alaska Region.

[FR Doc. 2018–23078 Filed 10–22–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2018–N124; FXES11130600000–189–FF01E00000]

Endangered Species; Receipt of Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of a permit application; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application for a permit to conduct activities intended to enhance the propagation and survival of an endangered species under the Endangered Species Act of 1973, as amended. We invite the public and local, State, Tribal, and Federal agencies to comment on this application. Before issuing the requested permit, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before November 23, 2018.

ADDRESSES: *Document availability and comment submission:* Submit requests for a copy of the application and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name and application number (*i.e.,* U.S. Geological Survey TE–003483–33):

- *Email: permitsR1ES@fws.gov.*
- *U.S. Mail:* Marilet Zablan, Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Recovery Permit Coordinator, Ecological Services, (503) 231–6131 (phone); *permitsR1ES@fws.gov* (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on an application for a permit under section

10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permit would allow the applicant to conduct activities intended to promote recovery of a species that is listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Application Available for Review and Comment

We issued permit TE–003483–32 to the U.S. Geological Survey Pacific Island Ecosystems Research Center in June 2018; that entity now requests an amendment to the permit. Proposed activities in the following permit request are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing this permit. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to this application. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
TE–003483–33	U.S. Geological Survey, Pacific Island Ecosystems Research Center, Honolulu, HI.	Add the following species to the current permit: Mariana gray swiftlet (*Aerodramus vanikorensis bartschi*).	Guam	Capture, handle, hold, band, attach radio transmitter, biosample, release, survey, monitor nests, and salvage.	Amend.

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.

Next Steps

If we decide to issue a permit to the applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Rolland White,

Assistant Regional Director—Ecological Services, Pacific Region.

[FR Doc. 2018–23104 Filed 10–22–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOS00000–L11100000.DF0000–18X]

Notice of Public Meetings, Southwest Resource Advisory Council, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976, and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Southwest Resource Advisory Council (RAC) is scheduled to meet as indicated below.

DATES: The meetings will be held on January 11, 2019 and March 8, 2019 from 9 a.m. to 4 p.m. A public comment period regarding matters on the agenda will be held at 11:30 a.m. at each meeting.

ADDRESSES: The January 11, 2019, meeting will be held at the Montrose Public Lands Center, 2465 S. Townsend Ave., Montrose, CO 81401. The March 8, 2019, meeting will be held at the Dolores Public Lands Center, 29211 Hwy. 184, Dolores, CO 81323.

FOR FURTHER INFORMATION CONTACT: Stephanie Connolly, Acting Public Affairs Specialist, Southwest District, BLM Grand Junction Field Office, 2815 H Road, Grand Junction, CO 81506. Phone: (970) 240–5315. Email: *sconnolly@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours.

The FRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues in the Southwest District, which includes the Grand Junction, Uncompahgre and Tres Rios field offices, as well as Canyons of the Ancients National Monument in Colorado. Agenda items for the January 2019 meeting include recreation fee proposals, the close-out of the Dominguez-Escalante Advisory Council, and forming a subcommittee dedicated to partnership-based trail construction in the Grand Junction area. A training

session for the Recreation RAC is also planned. Agenda items for the March 2019 meeting will be announced prior to the meeting. The public is encouraged to make oral comments to the RAC at either or both meetings at 11:30 a.m., or written statements may be submitted at the meeting for the RAC's consideration (see contact information above). Before including your address, phone number, email address, or other personally identifiable information in your comment, 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 the BLM in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Gregory P. Shoop,

Acting BLM Colorado State Director.

[FR Doc. 2018–23102 Filed 10–22–18; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

Certain Semiconductor Lithography Systems and Components Thereof; 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 September 12, 2018, under section 337 of the Tariff Act of 1930, as amended, on behalf of ASML Netherlands B.V. of the Netherlands; ASML US, L.P. of Chandler, Arizona; and ASML US, LLC of Chandler, Arizona. 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 semiconductor lithography systems and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,295,283 (''the '283 patent''); U.S. Patent No. 7,403,264 (''the '264 patent''); and U.S. Patent No. 9,188,880 (''the '880 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainants 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 the Secretary, Docket Services Division, 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 October 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, 2, 5–9, 15, 16, 18–22, 25, and 27 of the '283 patent; claims 1–3, 5, and 6 of the '264 patent; and claims 1, 3, 4, 7–12, 22, 23, and 25–27 of the '880 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 ''lithography machines that use a projection system to project circuit patterns drawn on a 'mask' or 'reticle' onto a photoresist on a silicon wafer, components of the lithography machines, and systems related to the operation of the lithography machines'';

(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 complainants are: ASML Netherlands B.V., De Run 6501, 5504 DR, Veldhoven, The Netherlands, ASML US, L.P., 2650 W Geronimo Place, Chandler, AZ 85224, ASML US, LLC, 2650 W Geronimo Place, Chandler, AZ 85224.

(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: Nikon Corporation, Shinagawa Intercity Tower C, 2–15–3, Konan, Minato-ku, Tokyo 108–6290, Japan, Nikon Precision Inc., 1399 Shoreway Road, Belmont, CA 94002–4107, Nikon Research Corporation of America, 1399 Shoreway Road, Belmont, CA 94002–4107.

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

The Chief Administrative Law Judge is authorized to consolidate Inv. No. 337–TA–1137 with Inv. No. 337–TA–1128 and/or Inv. No. 337–TA–1129 if he deems it appropriate.

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: October 9, 2018.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2018–23040 Filed 10–22–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Information Warfare Research Project Consortium

Notice is hereby given that, on October 15, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Information Warfare Research Project Consortium (''IWRP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: 2 Twelve Solutions, Arlington, VA; Aeronix, Inc., Melbourne, FL; Applied Engineering Concepts, Inc., Eldersburg, MD; Applied Signals Intelligence, Inc., Sterling, VA; Applied Technical Systems, Inc., Silverdale, WA; Aquabotix Technology Corporation, Fall River, MA; Aspen Consulting Group, Inc., Point Pleasant, NJ; AT&T Government Solutions, Inc., Vienna, VA; Atlantic CommTech Corp., Norfolk, VA; Avineon, Inc., McLean, VA; BAE Systems Information & Electronic Systems Integration, Inc., Nashua, NH; BCF Solutions, Inc., Chantilly, VA; BioRankings, St. Louis, MO; Boarhog LLC, San Diego, CA; Booz Allen Hamilton, Inc., McLean, VA; Brandywine Communications, Tustin, CA; Burke Consortium, Incorporated, Alexandria, VA; CACI, Inc. Federal, Sterling, VA; Cirrus, LLC, Walla Walla, WA; COLSA Corporation, Huntsville, AL; Colvin Run Networks, LLC, Great Falls, VA; Craig Technologies, Cape Canaveral, FL; DataSoft Corp., Tempe, AZ; Decisive Analytics Corporation, Arlington, VA; Dell Federal Systems L.P., Round Rock, TX; DLT Solutions, LLC, Herndon, VA; DroneShield LLC, Warrenton, VA; Dynetics, Inc., Huntsville, AL; ECS Federal, LLC, Fairfax, VA; Engineering Science Analysis Corp., Tempe, AZ; Enveil, Inc., Fulton, MD; Epoch Concepts, LLC, Highlands Ranch, CO; EWA-Government Systems, Inc., Herndon, VA; FGS, LLC, La Plata, MD; ForgeAi, Inc., Cambridge, MA; Frontier Technology, Inc., Beavercreek, OH; G2 Ops, Inc., Virginia Beach, VA; General Dynamics Information Technology, Inc., Fairfax, VA; General Dynamics Mission Systems, Inc., Fairfax, VA; General Electric Company, Lynn, MA; GenXComm Inc., Austin, TX; Geocent LLC, Metairie, LA; Geon Technologies LLC, Columbia, MD; George Consulting Ltd., Charleston, SC; Georgia Tech Research Corporation, Atlanta, GA; GPS Source, Inc., Pueblo, CO; Grey Matters Defense Solutions LLC, Castle Rock, CO; Grove Resource Solutions, Inc. (GRSi), Frederick, MD; Hamilton Consulting Solutions Corporation (HCSC), Chesapeake, VA; Hegarty Research LLC, McLean, VA; Home2Office Computing Solutions, Inc. dba C3 Networx, San Diego, CA; IBM Federal Department of the Navy, Armonk, NY; Indiana Microelectronics LLC, West Lafayette, IN; Intelligent Automation, Inc., Rockville, MD; Intelligent Decision Systems, Inc., Centreville, VA; Interclypse, Inc., Annapolis Junction, MD; IOMAXIS LLC, Lorton, VA; Keysight Technologies, Inc., Santa Rosa, CA; KinetX Aerospace, Inc., Tempe, AZ; King Technologies, Inc., San Diego, CA; Life Cycle Engineering, Inc., North Charleston, SC; Lone Star Analysis, Addison, TX; McKean Defense Group LLC, Philadelphia, PA; Metron, Inc., Reston, VA; Metronome LLC, Fairfax, VA; Microsoft Corporation (Microsoft Corporation Sitz in Redmond Corporation), Redmond, WA; Minerva Systems & Technologies LLC, Lexington, KY; Mission Solutions Group, Mt. Pleasant, SC; Modus21 LLC, Mount Pleasant, SC; NEANY Inc., Hollywood, MD; NexGen Data Systems, Inc., Goose Creek, SC; NineFX, Inc., Columbia, SC; Norseman, Inc., Elkridge, MD; Novetta, Inc., McLean, VA; Octo Consulting Group, Inc., Reston, VA; Omega-KR LLC, Austin, TX; Open Source Systems LLC, Charleston, SC; Oracle America, Inc., Reston, VA; Pacific Aerospace Consulting, Inc., San Diego, CA; Pacific Science & Engineering Group, Inc., San Diego, CA; Parsons Government Services, Inc., Pasadena, CA; PEMCCO Inc., Virginia Beach, VA; Peregrine Technical Solutions, LLC, Yorktown, VA; PGFM Solutions LLC, Sewell, NJ; Pillar Global Solutions, Inc., Stafford, VA; PortOne Technology Group LLC, Summerville, SC; Product Data Integration Technologies Inc. dba Modulant Inc., North Charleston, SC; RAM Laboratories, Inc., San Diego, CA; Real-Time Innovations, Inc., Sunnyvale, CA; Research Innovations Incorporated, Alexandria, VA; Reservoir Labs, Inc., New York, NY; Rite-Solutions, Inc., Pawcatuck, CT; Rockwell Collins, Inc., Cedar Rapids, IA; RPI Group, Inc., Fredericksburg, VA; Scientific Research Corporation (SRC), Atlanta, GA; Secure Channels, Inc., Irvine, CA; Segue Technologies, Inc., Arlington, VA; Sellers & Associates LLC, Chesapeake, VA; Semper Fortis Solutions, Leesburg, VA; Semper Valens Solutions, Inc., Canyon Lake, TX; Sentar, Inc., Huntsville, AL; Sentient Science Corporation, Buffalo, NY; Service Robotics & Technologies, Arlington, VA; Shadow-Soft LLC, Sandy Springs, GA; Si2 Technologies, Inc., N. Billerica, MA; Sierra Nevada Corporation, Sparks, NV; SIFT LLC, Minneapolis, MN; SimVentions Inc., Fredericksburg, VA; SIPPA Solutions LLC, Bayside, NY; Soar Technology, Inc., Ann Arbor, MI; Solers, Inc., Arlington, VA; Solute, Inc., San Diego, CA; Space Sciences Corporation, Lemitar, NM; Specialty Systems, Inc., Toms River, NJ; Spectral Analytics LLC, San Diego, CA; Spin Systems, Inc., Falls Church, VA; Stardog Union, Arlington, VA; SURVICE Engineering Company LLC, Belcamp, MD; Symantec Corporation, Mountain View, CA; Syncopated Engineering, Inc., Ellicott City, MD; Systematic, Inc., Centreville, VA; Technology Unlimited Group (TUG), San Diego, CA; Teradata Government Systems, Annapolis, MD; The Cameron Bell Corporation dba Gov Solutions Group, Charleston, SC; The Hard Yards LLC, Arlington, VA; The Informatics Applications Group, Inc. (TIAG), Reston, VA; The Metamorphosis Group, Inc., Vienna, VA; The Regents of the University of California, La Jolla, CA; The Samraksh Company, Dublin, OH; Toyon Research Corporation, Goleta, CA; Trace Systems, Inc., Vienna, VA; Trewon Technologies LLC, Stafford, VA; TrustedQA, Inc., Reston, VA; Unisys Corporation, Reston, VA; University of Florida (UF), Gainesville, FL; UtopiaCompression Corporation, Los Angeles, CA; Valkyrie Enterprises, Inc., Virginia Beach, VA; Vencore Inc. a Perspecta Company, Chantilly, VA; Ventech Solutions, Inc., Columbus, OH; Vigilant Technologies, Chandler, AZ; Virginia Polytechnic Institute and State University, Blacksburg, VA; Vista Defense Technologies LLC, Rock Island,

IL; Vitech Corporation, Blacksburg, VA; VMware, Inc., Palo Alto, CA; Wang Electro-Opto Corporation, Marietta, GA; World Wide Technology, Maryland Heights, MO; Wyle Laboratories, Inc., Lexington Park, MD; and X-Feds, Inc., San Diego, CA.

The general area of IWRP's planned activity is conduct research, development, and prototyping of projects and programs in the following technology areas: Cyber Warfare; Data Science/Analytics Technologies; Assured Communications; Cloud Computing; Enterprise Resource Tools; Collaboration and Social Networking; Autonomy; Internet of Things (IoT) Embedded Systems; Mobility, Model Based Systems Engineering (MBSE); On-Demand Manufacturing; Assured Command and Control (AC2); Integrated Fires (IF); and Battlespace Awareness (BA).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–23092 Filed 10–22–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0093]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; COPS Extension Request Form

AGENCY: Community Oriented Policing Services (COPS) Office, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Community Oriented Policing Services (COPS) Office, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register**, on August 20, 2018, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until November 23, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lashon M. Hilliard, Policy Analyst, Department of Justice, Community Oriented Policing Services (COPS) Office, 145 N Street NE, Washington, DC 20530 (202–514–6563). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Revision of a currently approved collection, with change; comments requested.

2. *The Title of the Form/Collection:* COPS Extension Request Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice, Community Oriented Policing Services (COPS) Office.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Law enforcement agencies and other COPS grants recipients that have grants expiring within 90 days of the date of the form/request. The extension request form will allow recipients of COPS grants the opportunity to request a ''no-cost'' time extension in order to complete the federal funding period and requirements for their grant/cooperative agreement award. Requesting and/or receiving a time extension *will not* provide additional funding.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that approximately 2,700 respondents annually will complete the form within 30 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* 1,350 total annual burden hours (0.5 hours × 2700 respondents + 1,350 total burden hours).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Washington, DC 20530.

Dated: October 17, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–23022 Filed 10–22–18; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Requests for Public Comment

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995, provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at

reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before December 24, 2018.

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210, *ebsa.opr@dol.gov,* (202) 693–8410, FAX (202) 219–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transaction exemptions described below. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Genetic Information Nondiscrimination Act of 2008 Research Exception Notice.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0136.

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Respondents: 3.

Responses: 3.

Estimated Total Burden Hours: 1.

Estimated Total Burden Cost (Operating and Maintenance): $16.

Description: The Genetic Information Nondiscrimination Act of 2008 (GINA), *Public Law 110–233,* was enacted on May 21, 2008. Title I of GINA amended the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act (PHS Act), the Internal Revenue Code of 1986 (Code), and the Social Security Act (SSA) to prohibit discrimination in health coverage based on genetic information. Sections 101 through 103 of Title I of GINA prevent employment-based group health plans and health insurance issuers in the group and individual markets from discriminating based on genetic information, and from collecting such information. The interim final regulations, which are codified at 29 CFR 2590.702–1, only interpret Sections 101 through 103 of Title I of GINA.

GINA and the interim final regulations (29 CFR 2590.702–1(c)(5)) provide a research exception to the limitations on requesting or requiring genetic testing that allow a group health plan or group health insurance issuer to request, but not require, a participant or beneficiary to undergo a genetic test if all of the following conditions of the research exception are satisfied:

- The request must be made pursuant to research that complies with *45 CFR part 46* (or equivalent Federal regulations) and any applicable State or local law or regulations for the protection of human subjects in research. To comply with the informed consent requirements of *45 CFR 46.116* (a)(8), a participant must receive a disclosure that participation in the research is voluntary, refusal to participate cannot involve any penalty or loss of benefits to which the participant is otherwise entitled, and the participant may discontinue participation at any time without penalty or loss of benefits to which the participant is entitled (the Participant Disclosure). The interim final regulations provide that when the Participant Disclosure is received by participants seeking their informed consent, no additional disclosures are required for purposes of the GINA research exception.
- The plan or issuer must make the request in writing and must clearly indicate to each participant or beneficiary (or in the case of a minor child, to the legal guardian of such beneficiary) to whom the request is made that compliance with the request is voluntary and noncompliance will have no effect on eligibility for benefits or premium or contribution amounts.
- None of the genetic information collected or acquired as a result of the research may be used for underwriting purposes.
- The plan or issuer must complete a copy of the ''*Notice of Research Exception under the Genetic Information Nondiscrimination Act*'' (the Notice) and provide it to the address specified in its instructions. The Notice and instructions are available on the Department of Labor's website (*http://www.dol.gov/ebsa*).

The Participant Disclosure and the Notice are the ICRs contained in the interim final rules. The Department previously requested review of this information collection and obtained approval OMB under OMB control number 1210–0136. The ICRs are scheduled to expire on February 28, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Definition of Plan Assets—Participant Contributions.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0100.

Affected Public: Businesses or other for-profits.

Respondents: 1.

Responses: 251.

Estimated Total Burden Hours: 8.

Estimated Total Burden Cost (Operating and Maintenance): $1,464.

Description: The regulation concerning plan assets and participant contributions provides guidance for fiduciaries, participants, and beneficiaries of employee benefit plans regarding how participant contributions to pension plans must be handled when they are either paid to the employer by the participant or directly withheld by the employer from the employee's wages for transmission to the pension plan. For those employers who may have difficulty meeting the regulation's deadlines for transmitting participant contribution, the regulation (29 CFR 2510.3–102(d)) provides an opportunity for the employer to obtain an extension of the time limit by providing participants and the Department with a notice that contains specified information. The ICR pertains to this notice requirement. The Department previously requested review of this ICR and obtained approval from OMB under OMB control number 1210–0100. That approval is scheduled to expire on February 28, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Disclosures for Participant-Directed Individual Account Plans.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0090.

Affected Public: Businesses or other for-profits.

Respondents: 518,282.

Responses: 713,900,000.

Estimated Total Burden Hours: 7,300,000.

Estimated Total Burden Cost (Operating and Maintenance): $274,000,000.

Description: Plan administrators are required to provide plan- and investment-related fee and expense information to participants and beneficiaries in all participant directed individual account plans (*e.g.,* 401(k) plans) for plan years beginning on or after January 1, 2011. The Department previously requested review of this information collection and obtained approval from OMB under OMB control number 1210–0090. The ICR is scheduled to expire on February 28, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Bank Collective Investment Funds; Prohibited Transaction Class Exemption 1991–38.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0082.

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Respondents: 6,000.

Responses: 6,000.

Estimated Total Burden Hours: 1,000.

Estimated Total Burden Cost (Operating and Maintenance): $0.

Description: PTE 91–38 provides an exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA) for certain transactions between a bank collective investment fund and persons who are parties in interest with respect to an employee benefit plan. Without the exemption, ERISA sections 406 and 407(a) and Internal Revenue Code section 4975(c)(1) may prohibit transactions between the collective investment fund (CIF) and a party in interest to one or more of the employee benefit plans participating in the collective investment fund.

Under PTE 91–38, a collective investment fund generally may engage in transactions with parties in interest to a plan that invests in the fund as long as the plan's total investment in the fund does not exceed a specified percentage of the total assets of the fund. PTE 91–38 also contains more limited or differently defined relief for funds holding more than the specified percentage for multiemployer plans, and for transactions involving employer securities and employer real property. In order to ensure that the rights of participants and beneficiaries are protected, and that bank collective investment funds can demonstrate compliance with the terms of the exemption, the Department requires a bank to maintain records regarding the exempted transactions and make them available for inspection to specified interested persons (including the Department and the Internal Revenue Service) on request for a period of six years.

EBSA previously submitted the information collection provisions of PTE 91–38 to OMB for review in an ICR that was approved under the OMB Control No. 1210–0082. The current approval is scheduled to expire on February 28, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 97–41; Collective Investment Funds Conversion Transactions.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0104.

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Respondents: 50.

Responses: 105.

Estimated Total Burden Hours: 1,760.

Estimated Total Burden Cost (Operating and Maintenance): $508,282.

Description: Prohibited Transaction Exemption (PTE) 97–41 provides an exemption from the prohibited transaction provisions of the Employment Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986. The exemption permits employee benefit plans to purchase shares of one or more open-end investment companies (the funds) registered under the Investment Advisers Act of 1940 by transferring in-kind, to the investment company, assets of the plan that are part of a collective investment fund (CIF) maintained by a bank or plan advisor that is both a fiduciary of the plan and an investment advisor to the investment company offering the fund.

The exemption requires that an independent fiduciary receive advance written notice of any covered transaction, as well as specific written information concerning the funds to be purchased. The independent fiduciary must also provide written advance approval of conversion transactions and receive written confirmation of each transaction, as well as additional on-going disclosures as defined in PTE 97–41. These disclosures are the basis for this ICR.

EBSA previously submitted the information collection provisions of PTE 97–41 to OMB for review in connection with promulgation of the prohibited transaction exemption. OMB approved the ICR under OMB Control No. 1210–0104. The ICR approval is currently scheduled to expire on February 28, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Foreign Currency Transactions; Prohibited Transaction Class Exemption 1994–20.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0085.

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Respondents: 248.

Responses: 1,240.

Estimated Total Burden Hours: 200.

Estimated Total Burden Cost (Operating and Maintenance): $0.

Description: PTE 94–20 permits the purchase and sale of foreign currencies between an employee benefit plan and a bank, broker-dealer, or an affiliate thereof, that is a trustee, custodian, fiduciary, or other party in interest with respect to the plan. The exemption is available provided that the transaction is directed (within the meaning of section IV(e) of the exemption) by a plan fiduciary that is independent of the bank, broker-dealer, or affiliate and all other conditions of the exemption are satisfied. Without this exemption, certain aspects of these transactions might be prohibited by ERISA section 406(a).

To protect the interests of participants and beneficiaries of the employee benefit plan, the exemption requires that the party wishing to take advantage of the exemption (1) develop written policies and procedures applicable to trading in foreign currencies on behalf of an employee benefit plan; (2) provide a written confirmation with respect to each transaction in foreign currency to the independent plan fiduciary, disclosing specified information; and (3) maintain records pertaining to the transaction for a period of six years. This ICR relates to the foregoing disclosure and recordkeeping requirements.

EBSA previously submitted the information collection provisions of PTE 94–20 to OMB for review in connection with promulgation of the prohibited transaction exemption. OMB approved the ICR under OMB Control No. 1210–0085. The ICR approval is currently scheduled to expire on February 28, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-Grandfathered Plans.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0144.

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Respondents: 1,801,225.

Responses: 278,413.

Estimated Total Burden Hours: 2,271.

Estimated Total Burden Cost (Operating and Maintenance): $1,143,236.

Description: The Patient Protection and Affordable Care Act, Public Law 111–148, (the Affordable Care Act) was enacted by President Obama on March 23, 2010. As part of the Act, Congress

added Public Health Service Act (PHS Act) section 2719, which provides rules relating to internal claims and appeals and external review processes. The Department, in conjunction with the Departments of the Treasury and Department of Health and Human Services (collectively, the Departments), issued interim final regulations on July 23, 2010 (75 FR 43330), which set forth rules implementing PHS Act section 2719 for internal claims and appeals and external review processes. With respect to internal claims and appeals processes for group health coverage, PHS Act section 2719 and paragraph (b)(2)(i) of the interim final regulations provide that group health plans and health insurance issuers offering group health insurance coverage must comply with the internal claims and appeals processes set forth in 29 CFR 2560.503–1 (the DOL claims procedure regulation) and update such processes in accordance with standards established by the Secretary of Labor in paragraph (b)(2)(ii) of the regulations.

Also, PHS Act section 2719 and the interim final regulations provide that group health plans and issuers offering group health insurance coverage must comply either with a State external review process or a Federal review process. The regulations provide a basis for determining when plans and issuers must comply with an applicable State external review process and when they must comply with the Federal external review process.

The claims procedure regulation imposes information collection requirements as part of the reasonable procedures that an employee benefit plan must establish regarding the handling of a benefit claim. These requirements include third-party notice and disclosure requirements that the plan must satisfy by providing information to participants and beneficiaries of the plan.

On June 24, 2011, the Department amended the interim final regulations. Two amendments revised the ICR. The first amendment provides that plans no longer are required to include diagnosis and treatment codes on notices of adverse benefit determination and final internal adverse benefit determination. Instead, they must notify claimants of the opportunity to receive the codes on request and plans and issuers must provide the codes upon request.

The second amendment also changes the method plans and issuers must use to determine who is eligible to receive a notice in a culturally and linguistically appropriate manner, and the information that must be provided to such persons. The previous rule was based on the number of employees at a firm. The new rule is based on whether a participant or beneficiary resides in a county where ten percent or more of the population residing in the county is literate only in the same non-English language. The ICR was approved by OMB under OMB Control Number 1210–0144 and is scheduled to expire on March 31, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Affordable Care Act Advance Notice of Rescission.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0141.

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Respondents: 100.

Responses: 1,533.

Estimated Total Burden Hours: 20.

Estimated Total Burden Cost (Operating and Maintenance): $250.

Description: Section 2712 of the PHS Act, as added by the Affordable Care Act, and the Department's interim final regulation (26 CFR 54.9815–2712, 29 CFR 2590.715–2712, 45 CFR 147.2712) provides rules regarding rescissions of health coverage for group health plans and health insurance issuers offering group or individual health insurance coverage. Under the statute and the interim final regulations, a group health plan, or a health insurance issuer offering group or individual health insurance coverage, generally must not rescind coverage except in the case of fraud or an intentional misrepresentation of a material fact. This standard applies to all rescissions, whether in the group or individual insurance market, or self-insured coverage. The rules also apply regardless of any contestability period of the plan or issuer.

PHS Act section 2712 adds a new advance notice requirement when coverage is rescinded where still permissible. Specifically, the second sentence in section 2712 provides that coverage may not be cancelled unless prior notice is provided, and then only as permitted under PHS Act sections 2702(c) and 2742(b). Under the interim final regulations, even if prior notice is provided, rescission is only permitted in cases of fraud or an intentional misrepresentation of a material fact as permitted under the cited provisions.

The interim final regulations provide that a group health plan, or a health insurance issuer offering group health insurance coverage, must provide at least 30 days advance notice to an individual before coverage may be rescinded. The notice must be provided regardless of whether the rescission is of group or individual coverage; or whether, in the case of group coverage, the coverage is insured or self-insured, or the rescission applies to an entire group or only to an individual within the group. The ICR was approved by OMB under OMB Control Number 1210–0141 and is scheduled to expire on March 31, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Affordable Care Act Grandfathered Health Plan Disclosure, Recordkeeping Requirement, and Change in Carrier Disclosure.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0140.

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Respondents: 983,923.

Responses: 18,143,918.

Estimated Total Burden Hours: 2,220.

Estimated Total Burden Cost (Operating and Maintenance): $366,791.

Description: Section 1251 of the Patient Protection and Affordable Care Act provides that certain plans and health insurance coverage in existence as of March 23, 2010, known as grandfathered health plans, are not required to comply with certain statutory provisions in the Act. To maintain its status as a grandfathered health plan, the interim final regulations (29 CFR 2590.715–1251(a)(3)) require the plan to maintain records documenting the terms of the plan in effect on March 23, 2010, and any other documents that are necessary to verify, explain or clarify status as a grandfathered health plan. The plan must make such records available for examination upon request by participants, beneficiaries, individual policy subscribers, or a State or Federal agency official.

The interim final regulations (29 CFR 2590.715–1251(a)(2)) also require a grandfathered health plan to include a statement in any plan material provided to participants or beneficiaries describing the benefits provided under the plan or health insurance coverage, that the plan or coverage believes it is a grandfathered health plan within the meaning of section 1251 of the Act, that being a grandfathered health plan means that the plan does not include certain consumer protections of the Act, and providing contact information for participants to direct questions regarding which protections apply and which protections do not apply to a grandfathered health plan and what might cause a plan to change from grandfathered health plan status and to

file complaints. The ICR contained in this interim final rule was approved by OMB under OMB Control Number 1210–0140, which is currently scheduled to expire on March 31, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Patient Protection and Affordable Care Act Patient Protection Notice.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0142.

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Respondents: 41,386.

Responses: 693,007.

Estimated Total Burden Hours: 5,173.

Estimated Total Burden Cost (Operating and Maintenance): $5,371.

Description: Section 2719A of the PHS Act, as added by the Affordable Care Act, and the Department's interim final regulation (29 CFR 2590.715–2719A), states that if a group health plan, or a health insurance issuer offering group or individual health insurance coverage, requires or provides for designation by a participant, beneficiary, or enrollee of a participating primary care provider, then the plan or issuer must permit each participant, beneficiary, or enrollee to designate any participating primary care provider who is available to accept the participant, beneficiary, or enrollee. When applicable, it is important that individuals enrolled in a plan or health insurance coverage know of their rights to (1) choose a primary care provider or a pediatrician when a plan or issuer requires participants or subscribers to designate a primary care physician; or (2) obtain obstetrical or gynecological care without prior authorization. Accordingly, paragraph (a)(4) of the interim final regulations requires such plans and issuers to provide a notice to participants (in the individual market, primary subscribers) of these rights when applicable. Model language is provided in the interim final regulations. The notice must be provided whenever the plan or issuer provides a participant with a summary plan description or other similar description of benefits under the plan or health insurance coverage, or in the individual market, provides a primary subscriber with a policy, certificate, or contract of health insurance. The ICR was approved by OMB under OMB Control Number 1210–0142 and is scheduled to expire on March 31, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Retirement Income Security Act Summary Annual Report Requirement.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0040.

Affected Public: Not-for-profit institutions, Businesses or other for-profits.

Respondents: 721,000.

Responses: 168,200,000.

Estimated Total Burden Hours: 2,300,000.

Estimated Total Burden Cost (Operating and Maintenance): $62,500,000.

Description: ERISA Section 104(b)(3) and the regulation published at 29 CFR 2520.104b–10 require, with certain exceptions, that administrators of employee benefit plans furnish annually to each participant and certain beneficiaries a summary annual report (SAR) meeting the requirements of the statute and regulation. The regulation prescribes the content and format of the SAR and the timing of its delivery. The SAR provides current information about the plan and assists those who receive it in understanding the plan's current financial operation and condition. It also explains participants' and beneficiaries' rights to receive further information on these issues.

EBSA previously submitted the ICR provisions in the regulation at 29 CFR 2520.104b–10 to OMB, and OMB approved the ICR under OMB Control No. 1210–0040. The ICR approval is scheduled to expire on April 30, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Summary of Benefits and Coverage and Uniform Glossary Required Under the Affordable Care Act.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0147.

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Respondents: 4,644,924.

Responses: 71,252,236.

Estimated Total Burden Hours: 431,552.

Estimated Total Burden Cost (Operating and Maintenance): $9,273,266.

Description: Section 2715 of the PHS Act directs the Department of Health and Human Services (HHS), the Department of Labor (DOL), and the Department of the Treasury (collectively, the Departments), in consultation with the National Association of Insurance Commissioners (NAIC) and a working group comprised of stakeholders, to ''develop standards for use by a group health plan and a health insurance issuer in compiling and providing to applicants, enrollees, and policyholders and certificate holders a summary of benefits and coverage explanation that accurately describes the benefits and coverage under the applicable plan or coverage.'' To implement these disclosure requirements, collection of information requests relate to the provision of the following: Summary of benefits and coverage, which includes coverage examples; a uniform glossary of health coverage and medical terms; and a notice of modifications. The ICR was approved by OMB under OMB Control Number 1210–0147 and is scheduled to expire on April 30, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Annual Report for Multiple Employer Welfare Arrangements (Form M–1).

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0116.

Affected Public: Businesses or other for-profits, not-for-profit institutions.

Respondents: 456.

Responses: 456.

Estimated Total Burden Hours: 97.

Estimated Total Burden Cost (Operating and Maintenance): $81,900.

Description: The Health Insurance Portability and Accountability Act of 1996 (HIPAA), codified as Part 7 of Title I of the Employee Retirement Security Act of 1974 (ERISA), was enacted to improve the portability and continuity of health care coverage for participants and beneficiaries of group health plans. In the interest of assuring compliance with Part 7, section ERISA 101(g), added by HIPAA, further permits the Secretary of Labor (the Secretary) to require multiple employer welfare arrangements (MEWAs), as defined in ERISA section 3(40), to report to the Secretary in such form and manner as the Secretary might determine. The Department published a final rule providing for such reporting on an annual basis, together with a form (Form M–1) to be used by MEWAs for the annual report. The reporting requirement enables the Secretary to determine whether the requirements of Part 7 of ERISA are being carried out.

The Patient Protection and Affordable Care Act (Pub. L. 111–148, 124 Stat. 119) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, 124 Stat. 1029) (these are collectively known as the ''Affordable Care Act'') amended ERISA section 101(g). Under this amendment, MEWAs providing benefits consisting of medical

care (within the meaning of ERISA section 733(a)(2) that are not group health plans must now register with the Secretary prior to operating in a State. EBSA previously submitted an ICR for the information collection in Form M–1 to OMB for review under the PRA and received approval under OMB control number 1210–0116. This current approval is scheduled to expire on June 30, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Notice of Special Enrollment Rights Under Group Health Plans.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0101.

Affected Public Businesses or other for-profits, not-for-profit institutions.

Respondents: 2,300,000.

Responses: 8,600,000.

Estimated Total Burden Hours: 1.

Estimated Total Burden Cost (Operating and Maintenance): $75,000.

Description: Subsection (c) of 29 CFR 2590.701–6 requires group health plans to provide a notice describing the plan's special enrollment rules to each employee who is offered an initial opportunity to enroll in the group health plan. The special enrollment rules described in the notice of special enrollment generally provide enrollment rights to employees and their dependents in specified circumstances occurring after the employee or dependent initially declines to enroll in the plan. EBSA previously submitted an ICR concerning the notice of special enrollment to OMB for review under the PRA and received approval under OMB Control No. 1210–0101. The current ICR approval is scheduled to expire on June 30, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemptions for Multiple Employer Plans and Multiple Employer Apprenticeship Plans, PTE 76–1, PTE 77–10, PTE 78–6.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0058.

Affected Public Businesses or other for-profits, not-for-profit institutions.

Respondents: 3,625.

Responses: 3,625.

Estimated Total Burden Hours: 906.

Estimated Total Burden Cost (Operating and Maintenance): $0.

Description: This ICR covers information collections contained in three related prohibited transaction class exemptions: PTE 76–1, PTE 77–10, and PTE 78–6. All three of these exemptions cover transactions that were recognized by the Department as being well-established, reasonable, and customary transactions in which collectively bargained multiple employer plans (principally, multiemployer plans, but also including other collectively bargained multiple employer plans) frequently engage in order to carry out their purposes.

PTE 76–1 provides relief, under specified conditions, for three types of transactions: (1) Part A of PTE 76–1 permits collectively bargained multiple employer plans to take several types of actions regarding delinquent or uncollectible employer contributions; (2) Part B of PTE 76–1 permits collectively bargained multiple employer plans, under specified conditions, to make construction loans to participating employers; and (3) Part C of PTE 76–1 permits collectively bargained multiple employer plans to share office space and administrative services, and the costs associated with such office space and services, with parties in interest. PTE 77–10 complements Part C of PTE 76–1 by providing relief from the prohibitions of ERISA section 406(b)(2) with respect to collectively bargained multiple employer plans sharing office space and administrative services with parties in interest if specific conditions are met. PTE 78–6 provides an exemption to collectively bargained multiple employer apprenticeship plans for the purchase or leasing of personal property from a contributing employer (or its wholly owned subsidiary) and for the leasing of real property (other than office space within the contemplation of ERISA section 408(b)(2)) from a contributing employer (or its wholly owned subsidiary) or an employee organization any of whose members' work results in contributions being made to the plan.

Each of these PTEs requires, as part of its conditions, either written agreements, recordkeeping, or both. The Department has combined the information collection provisions of the three PTEs into one ICR because it believes that the public benefits from having the opportunity to collectively review these closely related exemptions and their similar information collections. The Department previously submitted an ICR to OMB for approval of the information collections in PTEs 76–1, 77–10, and 78–6 and received OMB approval under OMB Control No. 1210–0058. The current approval is scheduled to expire on June 30, 2019.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Multiple Employer Welfare Arrangement Administrative Law Judge Administrative Hearing Procedures.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0148.

Affected Public: Businesses or other for-profits.

Respondents: 10.

Responses: 10.

Estimated Total Burden Hours: 20.

Estimated Total Burden Cost (Operating and Maintenance): $595,700.

Description: Congress enacted section 6605 of the Affordable Care Act, Public Law 111–148, 124 Stat. 119, 780 (2010), which adds section 521 to ERISA, to provide the Secretary with additional enforcement authority to protect plan participants, beneficiaries, employees or employee organizations, or other members of the public against fraudulent, abusive, or financially hazardous Multiple Employer Welfare Arrangements (MEWAs). This section authorizes the Secretary to issue ex parte cease and desist orders when it appears to the Secretary that the alleged conduct of a MEWA is ''fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.'' A person that is adversely affected by the issuance of a cease and desist order may request an administrative hearing regarding the order. This request for an administrative hearing is an information collection under the Paperwork Reduction Act.

The Department previously submitted this information collection to OMB in an ICR that was approved under OMB Control Number 1210–0148. The current approval is scheduled to expire on June 30, 2019.

II. Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are 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 collections 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.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICRs for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: October 17, 2018.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 2018–23079 Filed 10–22–18; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management; Senior Executive Service; Appointment of Members to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the Appointment of the individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individuals are hereby appointed to serve on the Department's Performance Review Board:

Permanent Membership

Chair—Deputy Secretary
Vice-Chair—Assistant Secretary for Administration and Management
Alternate Vice-Chair—Chief Human Capital Officer

Rotating Membership—Appointments Expire on 09/30/21

BLS Nancy Ruiz De Gamboa, Associate Commissioner for Administration
EBSA Amy Turner, Director, Health Plan Standards and Compliance Assistance
ETA Thomas Dowd, Deputy Assistant Secretary
ETA Nicholas Lalpuis, Regional Administrator, Dallas
ILAB Martha Newton, Deputy Undersecretary for International Labor Affairs
MSHA Patricia Silvey, Deputy Assistant Secretary
OASAM Geoffrey Kenyon, Director, Departmental Budget Center
OLMS Stephen Willertz, Director, Office of Enforcement and International Union Audits
OSHA Galen Blanton, Regional Administrator, Boston
OSHA Loren Sweatt, Deputy Assistant Secretary
SOL Kate O'Scannlain, Solicitor of Labor
VETS Ivan Denton, Director, National Programs
WHD Patrice Torres, Assistant Administrator, Office of Administration

FOR FURTHER INFORMATION CONTACT: Ms. Lucy Cunningham, Director, Office of Executive Resources, Room N2453, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Ave. NW, Washington, DC 20210, telephone: (202) 693–6624.

Signed at Washington, DC, on the 17th day of October, 2018.

Bryan Slater,

Assistant Secretary for Administration, And Management.

[FR Doc. 2018–23062 Filed 10–22–18; 8:45 am]

BILLING CODE 4510–04–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2018–0007]

National Advisory Committee on Occupational Safety and Health (NACOSH); Request for Nominations

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for nominations to serve on NACOSH.

SUMMARY: The Secretary of Labor requests nominations for membership on NACOSH.

DATES: Nominations for NACOSH membership must be submitted (postmarked, sent or received) by December 24, 2018.

ADDRESSES: You may submit nominations for NACOSH, which must include the docket number for this **Federal Register** notice (Docket No. OSHA–2018–0007), by one of the following methods:

Electronically: You may submit nominations, including attachments, electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the online instructions for making submissions.

Facsimile: If your nomination, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Regular mail, express delivery, hand delivery, messenger/courier service (hard copy): You may submit your materials to the OSHA Docket Office, Docket No. OSHA–2018–0007, Room N–3653, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; telephone (202) 693–2350 (TTY number is (877) 889–5627). OSHA's Docket Office accepts deliveries (hand deliveries, express mail, and messenger/courier service) from 10 a.m. to 3 p.m. ET.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Mr. Francis Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999 (TTY 877–889–5627); email: *meilinger.francis2@dol.gov.*

For general information: Ms. Michelle Walker, Director, OSHA Technical Data Center, Directorate of Technical Support and Emergency Management; telephone: (202) 693–2350 (TTY 877–889–5627); email: *walker.michelle@dol.gov.*

SUPPLEMENTARY INFORMATION: The Secretary of Labor (Secretary) invites interested individuals to submit nominations for membership on NACOSH.

The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) established NACOSH to advise, consult with, and make recommendations to the Secretary and the Secretary of Health and Human Services (HHS Secretary) on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory committee of indefinite duration.

NACOSH operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), implementing regulations (41 CFR part 102–3), the OSH Act, and OSHA's regulations on NACOSH (29 CFR part 1912a).

NACOSH is comprised of 12 members, all of whom the Secretary appoints. The terms of six NACOSH members expired on December 31, 2017, and the remaining six NACOSH members' terms expire on December 31, 2018. OSHA invites nominations for all of the NACOSH positions:

- Four (4) public representatives;
- Two (2) management representative;
- Two (2) labor representative;
- Two (2) occupational safety professional representatives; and
- Two (2) occupational health professional representatives.

Pursuant to 29 CFR 1912a.2, the HHS Secretary designates both of the occupational health professional representatives and two of the four public representatives for the Secretary's consideration and appointment. OSHA will provide to HHS all nominations and supporting materials for the membership categories the HHS Secretary designates.

NACOSH members serve staggered terms, unless the member becomes

unable to serve, resigns, ceases to be qualified to serve, or is removed by the Secretary. Accordingly, the Secretary will appoint six members to a two-year term and six to a three-year term. If a vacancy occurs before a term expires, the Secretary may appoint a new member who represents the same interest as the predecessor to serve the remainder of the unexpired term. The Committee shall meet at least two times a year (29 U.S.C. 656(a)(2)).

Any individual or organization may nominate one or more qualified persons for membership on NACOSH. Nominations must include:

- The nominee's name and contact information;
- The nominee's occupation or current position;
- The categories that the nominee is qualified to represent;
- The nominee's resume or curriculum vitae;
- Membership in relevant organizations and associations;
- A summary of the nominee's background, experience, and qualifications to serve on NACOSH;
- A list of articles or other documents the nominee has authored that indicates the nominee's experience in worker safety and health;
- A statement that the nominee has no conflicts of interest that would preclude membership on NACOSH; and
- A statement that the nominee is aware of the nomination and is willing to serve and regularly attend NACOSH meetings.

The Secretary will appoint NACOSH members on the basis of their experience and competence in the field of occupational safety and health (29 CFR 1912a.2). The information OSHA receives through this nomination process, in addition to other relevant sources of information, will assist the Secretary in appointing members to serve on NACOSH. In appointing NACOSH members, the Secretary will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals.

The U.S. Department of Labor (Department) is committed to equal opportunity in the workplace and seeks a broad-based and diverse NACOSH membership. The Department will conduct a public records check of nominees before their appointment using publicly available sources.

Public Participation, Submissions and Access to Public Record

You may submit nominations using one of the methods listed in the **ADDRESSES** section. Your submission must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2018–0007). Due to security-related procedures, receipt of submissions by regular mail may experience significant delay. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand, express delivery, or messenger/courier service.

OSHA posts submissions without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information, such as Social Security Numbers and birth dates. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through that website. All submissions, including copyrighted material, are available for inspection and copying, if permissible, at the OSHA Docket Office. Information on using *http://www.regulations.gov* to submit comments and access the docket is available on that website. Please contact the OSHA Docket Office for information about materials not available through that website and for assistance in using the internet to locate docket submissions.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, also are available on OSHA's web page at *http://www.osha.gov.*

Authority and Signature

Loren Sweatt, Deputy Assistant of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by 29 U.S.C. 656; 5 U.S.C. App. 2; 29 CFR part 1912a; 41 CFR part 102–3; and Secretary of Labor's Order No. 1–2012 (77 FR 3912 (1/25/2012)) and 04–2018 (6/1/2018).

Signed at Washington, DC, on October 17, 2018.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2018–23076 Filed 10–22–18; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for International Science and Engineering; 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: Proposal Review Panel for International Science and Engineering—PIRE ''Coastal Flood Risk Reduction Program: Integrated, multi-scale approaches for understanding how to reduce vulnerability to damaging events'' Site Visit (#10749).

Date and Time: November 19, 2018; 8:00 a.m.—8:30 p.m.; November 20, 2018; 8:30 a.m.–1:30 p.m.

Place: Texas A&M University at Galveston, Ocean and Coastal Studies Building, 1001 Texas Clipper Road, Galveston TX 77554.

Type of Meeting: Part Open.

Contact Person: Charles Estabrook, PIRE Program Manager, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; Telephone 703/292–7222.

Purpose of Meeting: NSF site visit to conduct a review during year 2 of the five-year award period. To conduct an in depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Agenda: See attached.

Reason for Closing: Topics to be discussed and evaluated during closed portions of the site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 17, 2018.

Crystal Robinson,

Committee Management Officer.

PIRE NSF Site Visit Agenda—TAMUG

Day 1 Monday, November 19, 2018

8:00 a.m.–9:00 a.m. Meet & Greet over continental breakfast (OPEN)
9:00 a.m.–9:30 a.m. PIRE overview (OPEN)
—PIRE Rationale and Goals, accomplishments and future plans
—Administration, Management, and Budget Plans
—Facilities and Physical Infrastructure
—Developing Human Resources
9:30 a.m.–10:00 a.m. Review of Responses to Issues by Past Reviewers (OPEN)
10:10 a.m.–10:30 a.m. NSF Executive Session/Break (CLOSED)
10:30 a.m.–10:40 a.m. Break
10:40 a.m.–11:30 a.m. Research (OPEN)
11:30 a.m.–Noon Students' Research Travel to the Netherlands (OPEN)
Noon–12:30 p.m. NSF Executive Session (CLOSED)

12:30 p.m.–1:30 p.m. Lunch–Discussion with Students (CLOSED)
1:30 p.m.–2:00 p.m. Education (OPEN)
2:00 p.m.–2:30 p.m. Integrating Research and Education (OPEN)
2:30 p.m.–3:00 p.m. Integrating Diversity (OPEN)
3:00 p.m.–3:30 p.m. NSF Executive Session/Break (CLOSED)
3:30 p.m.–4:15 p.m. Partnerships (OPEN)
4:15 p.m.–5:15 p.m. Wrap up (OPEN)
5:15 p.m.–6:15 p.m. Executive Session/Break-Develop issues for clarification (CLOSED)
6:15 p.m.–6:30 p.m. Critical Feedback Provided to PI (CLOSED)
7:00 p.m.–8:30 p.m. NSF Executive Session/Working Dinner (CLOSED)

Day 2 Tuesday, November 20, 2018

8:30 a.m.–9:30 a.m. Institutional Support (Administrators and PI/Co-PIs) (OPEN)
9:30 a.m.–10:30 a.m. Summary/Proposing Team Response to Critical Feedback (CLOSED)
10:30 a.m.–10:40 a.m. Break
10:40 a.m.–1:00 p.m. Site Review Team Prepares Site Visit Report (CLOSED) (11:45 a.m. Brown Bag Lunch Provided)
1:00 p.m.–1:30 p.m. Presentation of Site Visit Report to Principal Investigator (CLOSED)

[FR Doc. 2018–23023 Filed 10–22–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for International Science and Engineering; 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: Proposal Review Panel for International Science and Engineering—PIRE ''International Program for the Advancement of Neurotechnology'' Reverse Site Visit (#10749).

Date and Time: November 13, 2018; 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, Room W3170, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

Type of Meeting: Part Open.

Contact Person: Charles Estabrook, PIRE Program Manager, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; Telephone 703–292–7222.

Purpose of Meeting: NSF reverse site visit to conduct a review during year 2 of the five-year award period. To conduct an in depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Agenda: See attached.

Reason for Late Notice: Due to unforeseen scheduling complications and the necessity to proceed with the review of the program.

Reason for Closing: Topics to be discussed and evaluated during closed portions of the reverse site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 17, 2018.

Crystal Robinson,

Committee Management Officer.

PIRE NSF Reverse Site Visit Agenda—Yoon University of Michigan

NSF Headquarters in Alexandria, Virginia

Tuesday, November 13, 2018

8:00 a.m. Panelists arrive. Coffee/light refreshments available.
8:15 a.m.–8:45 a.m. Panel Orientation (CLOSED)
PIRE Rationale and Goals, Charge to Panel
8:45 a.m. PIs arrive. Introductions (OPEN)
9:00 a.m.–11:30 a.m. PIRE Project Presentation (OPEN)
Research
Integrating Research & Education
Students (*e.g.* involvement in project, recruitment, diversity)
Project Management and Communication
Evaluation & Assessment
Institutional Support
International Partnerships
11:30 a.m.–12:30 p.m. Questions and Answers (OPEN)
12:30 p.m.–2:00 p.m. Working Lunch–Panel Discussion (CLOSED)
2:00 p.m.–2:30 p.m. Initial Feedback to PIRE PI and presenters (CLOSED)
2:30 p.m. PIRE PI and presenters are dismissed
2:30 p.m.–4:45 p.m. Panel Prepares Reverse Site Visit Report (CLOSED)
4:45 p.m.–5:00 p.m. Report presented to and discussion held with NSF staff (CLOSED)
5:00 p.m. End of Reverse Site Visit

[FR Doc. 2018–23025 Filed 10–22–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for International Science and Engineering; 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: Proposal Review Panel for International Science and Engineering—PIRE ''Advanced Artificial Muscles for International and Globally Competitive Research and Education in Soft Robotics'' Reverse Site Visit (#10749).

Date and Time: November 16, 2018; 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, Room W3190, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

Type of Meeting: Part Open.

Contact Person: Charles Estabrook, PIRE Program Manager, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; Telephone 703–292–7222.

Purpose of Meeting: NSF reverse site visit to conduct a review during year 2 of the five-year award period. To conduct an in depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Agenda: See attached.

Reason for Late Notice: Due to unforeseen scheduling complications and the necessity to proceed with the review of the program.

Reason for Closing: Topics to be discussed and evaluated during closed portions of the reverse site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 17, 2018.

Crystal Robinson,

Committee Management Officer.

PIRE NSF Reverse Site Visit Agenda—Kim—University of Nevada Las Vegas

NSF Headquarters in Alexandria, Virginia

Friday, November 16, 2018

8:00 a.m. Panelists arrive. Coffee/light refreshments available.
8:15 a.m.–8:45 a.m. Panel Orientation (CLOSED)
PIRE Rationale and Goals, Charge to Panel
8:45 a.m. PIs arrive. Introductions (OPEN)
9:00 a.m.–11:30 a.m. PIRE Project Presentation (OPEN)

Research
Integrating Research & Education
Students (*e.g.* involvement in project, recruitment, diversity)
Project Management and Communication
Evaluation & Assessment
Institutional Support
International Partnerships
11:30 a.m.–12:30 p.m. Questions and Answers (OPEN)
12:30 p.m.–2:00 p.m. Working Lunch–Panel Discussion (CLOSED)
2:00 p.m.–2:30 p.m. Initial Feedback to PIRE PI and presenters (CLOSED)
2:30 p.m. PIRE PI and presenters are dismissed
2:30 p.m.–4:45 p.m. Panel Prepares Reverse Site Visit Report (CLOSED)
4:45 p.m.–5:00 p.m. Report presented to and discussion held with NSF staff (CLOSED)
5:00 p.m. End of Reverse Site Visit

[FR Doc. 2018–23024 Filed 10–22–18; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0231]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from September 25, 2018 to October 5, 2018. The last biweekly notice was published on October 9, 2018.

DATES: Comments must be filed by November 23, 2018. A request for a hearing must be filed by December 24, 2018.

ADDRESSES: You may submit comments by any of the following methods

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0231. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Shirley Rohrer, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5411, email: *Shirley.rohrer@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0231 facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0231.
- *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.* 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–2018–0231 facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *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. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-

day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance

with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment application(s), see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station (Catawba), Units 1 and 2 (CNS), York County, South Carolina

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station (McGuire), Units 1 and 2 (MNS), Mecklenburg County, North Carolina

Duke Energy Progress, LLC, Docket No. 50–400, Shearon Harris Nuclear Power Plant (Harris), Unit 1 (HNP), Wake County, North Carolina

Duke Energy Progress, LLC, Docket No. 50–261, H. B. Robinson Steam Electric Plant (Robinson), Unit No. 2 (RNP), Darlington County, South Carolina

Date of amendment request: May 10, 2018. A publicly-available version is in ADAMS under Accession No. ML18131A068.

Description of amendment request: The amendments would revise the technical specifications (TSs) for Catawba and McGuire to remove ventilation system heaters. Specifically, ventilation system heaters will be removed from Catawba TSs 3.6.10, ''Annulus Ventilation System (AVS),'' and 3.7.10, ''Control Room Area Ventilation System (CRAVS),'' 3.7.12, ''Auxiliary Building Filtered Ventilation

Exhaust System (ABFVES),'' 3.7.13, ''Fuel Handling Ventilation Exhaust System (FHVES),'' and 3.9.3, ''Containment Penetrations,'' 5.5.11, ''Ventilation Filter Testing Program (VFTP),'' and 5.6.6, ''Ventilation Systems Heater Report,'' and McGuire TSs 3.6.10, ''Annulus Ventilation System (AVS),'' 3.7.9, ''Control Room Area Ventilation System (CRAVS),'' 5.5.11, ''Ventilation Filter Testing Program (VFTP),'' and 5.6.6, ''Ventilation Systems Heater Failure Report.'' The specified relative humidity for charcoal testing in the ventilation system Surveillance Requirement (for Harris) and Ventilation Filter Testing Program (for Robinson) is revised from 70% to 95% and the ventilation system heaters will be removed from the Harris TSs ¾.7.6, ''Control Room Emergency Filtration System,'' ¾.7.7, ''Reactor Auxiliary Building (RAB) Emergency Exhaust System,'' and ¾.9.12, ''Fuel Handling Building Emergency Exhaust System,'' and Robinson TSs 3.7.11, ''Fuel Building Air Cleanup System (FBACS),'' and 5.5.11, ''Ventilation Filter Testing Program (VFTP).'' The proposed changes are consistent with Technical Specifications Task Force (TSTF) Traveler TSTF–522, ''Revise Ventilation System Surveillance Requirements to Operate for 10 Hours per Month,'' Revision 0. Additionally, an administrative error is being corrected in McGuire's TS 5.5.11, ''Ventilation Filter Testing Program (VFTP).''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change affects various CNS [Catawba Nuclear Station], MNS [McGuire Nuclear Station], HNP [Shearon Harris Nuclear Power Plant], and RNP [H. B. Robinson Steam Electric Plant] ventilation system TS. For both CNS and MNS, the proposed change removes the requirement to test the heaters in these systems, and removes the Conditions in the associated TS which provide Required Actions, including reporting requirements, for inoperable heaters. In addition, the proposed change revises the CNS Surveillance Requirement (SR) 3.9.3.2 to operate for 15 continuous minutes without heaters running. For HNP and RNP, the proposed change removes the operability of the heaters from the SR. In addition, the electric heater output test is proposed to be deleted and a corresponding change in the charcoal filter testing to be made to require the testing be conducted at a humidity of at least 95% RH [relative humidity], which is more stringent than the current testing requirement of 70% RH.

These systems are not accident initiators and therefore, these changes do not involve a significant increase in the probability of an accident. The proposed system and filter testing changes are consistent with current regulatory guidance for these systems and will continue to assure that these systems perform their design function, which may include mitigating accidents. Thus the change does not involve a significant increase in the consequences of an accident.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change affects various CNS, MNS, HNP, and RNP ventilation system TS. For both CNS and MNS, the proposed change removes the requirement to test the heaters in these systems, and removes the Conditions in the associated TS which provide Required Actions, including reporting requirements, for inoperable heaters. In addition, the proposed change revises the CNS Surveillance Requirement (SR) 3.9.3.2 to operate for 15 continuous minutes without heaters running. For HNP and RNP, the proposed change removes the operability of the heaters from the SR. In addition, the electric heater output test is proposed to be deleted and a corresponding change in the charcoal filter testing to be made to require the testing be conducted at a humidity of at least 95% RH, which is more stringent than the current testing requirement of 70% RH.

The change proposed for these ventilation systems do not change any system operations or maintenance activities. Testing requirements will be revised and will continue to demonstrate that the Limiting Conditions for Operation are met and the system components are capable of performing their intended safety functions. The change does not create new failure modes or mechanisms and no new accident precursors are generated.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change affects various CNS, MNS, HNP, and RNP ventilation system TS. For both CNS and MNS, the proposed change removes the requirement to test the heaters in these systems, and removes the Conditions in the associated TS which provide Required Actions, including reporting requirements, for inoperable heaters. In addition, the proposed change revises the CNS Surveillance Requirement (SR) 3.9.3.2 to operate for 15 continuous minutes without heaters running. For HNP and RNP, the proposed change removes the operability of the heaters from the SR. In addition, the electric heater output test is proposed to be deleted and a corresponding change in the charcoal filter testing to be made to require the testing be conducted at a humidity of at least 95% RH, which is more stringent than the current testing requirement of 70% RH.

The proposed increase to 95% RH in the required testing of the charcoal filters for HNP and RNP, compensates for the function of the heaters, which was to reduce the humidity of the incoming air to below the currently-specified value of 70% RH for the charcoal. The proposed change is consistent with regulatory guidance and continues to ensure that the performance of the charcoal filters is acceptable.

The CNS and MNS ventilation systems are tested at 95% relative humidity, and, therefore, do not require heaters to heat the incoming air and reduce the relative humidity. The proposed change eliminates Technical Specification requirements for testing of heater operation, and removes administrative actions for heater inoperability.

The proposed changes are consistent with the regulatory guidance and do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Kathryn B. Nolan, Deputy General Counsel, Duke Energy Corporation, 550 South Tryon Street, Mail Code DEC45A, Charlotte, NC 28202.

NRC Branch Chief: Michael Markley.

Duke Energy Progress, LLC (Duke Energy), Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: April 16, 2018, as supplemented by letter dated September 25, 2018. Publicly-available versions are in ADAMS under Accession Nos. ML18117A006 and ML18269A009, respectively.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TSs) by relocating specific TS surveillance frequencies to a licensee-controlled program with the adoption of Technical Specification Task Force (TSTF) Traveler TSTF–425, Revision 3, ''Relocate Surveillance Frequencies to Licensee Control—Risk Informed Technical Specification Task Force (RITSTF) Initiative 5b.'' Additionally, the change would add a new program, the Surveillance Frequency Control Program, to TS Section 5, Administrative Controls.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change relocates the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control Program. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the technical specifications for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The changes do not involve a physical alteration of the plant (that is, no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The design, operation, testing methods and acceptance criteria for systems, structures and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the final safety analysis report and bases to the TS), since these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, Duke Energy will perform a probabilistic risk evaluation using the guidance contained in NRC approved Nuclear Energy Institute (NEI) 04–10, Revision 1, in accordance with the TS Surveillance Frequency Control Program. NEI 04–10, Revision 1 methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177, ''An Approach for Plant-Specific, Risk Informed Decision making: Technical Specifications.''

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kathryn B. Nolan, Deputy General Counsel, Duke Energy Corporation, 550 South Tryon Street, DEC45A, Charlotte, NC 28202.

NRC Branch Chief: Undine Shoop.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: August 23, 2018. A publicly-available version is in ADAMS under Accession No. ML18235A109.

Description of amendment request: The amendments would revise the Limerick Generating Station (LGS), Units 1 and 2, Technical Specifications. The proposed changes would revise the TS requirements for inoperable dynamic restraints (snubbers) by adding a new Limiting Condition for Operation 3.0.8.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change allows a delay time before declaring supported Technical Specification (TS) systems inoperable when the associated snubber(s) cannot perform its required safety function. Entrance into Actions or delaying entrance into Actions is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on the delay time allowed before declaring a TS supported system inoperable and taking its Actions are no different than the consequences of an accident under the same plant conditions while relying on the existing TS supported system Actions. Therefore, the consequences of an accident previously evaluated are not significantly increased by this change. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change allows a delay time before declaring supported TS systems inoperable when the associated snubber(s) cannot perform its required safety function. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The current LGS TS 3.7.4 allows a delay time before declaring supported TS systems inoperable when the associated snubber(s) cannot perform its required safety function. The proposed TS 3.0.8 provides a similar allowance. The current LGS TS 3.7.4 provides adequate margin of safety for plant operation, as does TS 3.0.8. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Calvert County, Maryland

Date of amendment request: August 23, 2018. A publicly available version is in ADAMS under Accession No. ML18235A199.

Description of amendment request: The amendments would revise the

Calvert Cliffs Nuclear Power Plant, Units 1 and 2 (Calvert Cliffs or CCNPP) Technical Specifications (TS) to permit a one-time extension to the completion times (CTs) for two required actions in Section 3.8.1, ''AC [Alternating Current] Sources-Operating,'' of the Calvert Cliffs TSs. The one-time extensions up to 14 days would apply to Required Action A.3, ''Restore required offsite circuit to OPERABLE status,'' and Required Action D.3, ''Declare CREVS [Control Room Emergency Ventilation System] and CRETS [Control Room Emergency Temperature Control System] supported by the inoperable offsite circuit inoperable.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS changes will not increase the probability of an accident since they will only extend the time period that one qualified offsite circuit can be out of service. The extension of the time duration that one qualified offsite circuit is out of service has no direct physical impact on the plant. The proposed inoperable offsite circuit limits the available redundancy of the offsite electrical system to a period not to exceed 14 days per each Unit. Therefore, the proposed TS changes do not have a direct impact on the plant that would make an accident more likely to occur due to their extended completion times.

During transients or events which require these subsystems to be operating, there is sufficient capacity in the operable loops/subsystems and available but inoperable equipment to support plant operation or shutdown. Therefore, failures that are accident initiators will not occur more frequently than previously postulated as a result of the proposed changes.

In addition, the consequences of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR) will not be increased. With one offsite circuit inoperable, the consequences of any postulated accidents occurring on Unit 1 or Unit 2 during these CT extensions was found to be bounded by the previous analyses as described in the UFSAR.

The minimum equipment required to mitigate the consequences of an accident and/or safely shut down the plant will be operable or available. Therefore, by extending certain CTs and extending the assumptions concerning the combinations of events for the longer duration of each extended CT, Exelon concludes that at least the minimum equipment required to mitigate the consequences of an accident and/or safely shut down the plant will still be operable or available during the extended CT.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS changes will not create the possibility of a new or different type of accident since they will only extend the time period that one of the offsite circuits can be out of service. The extension of the time duration that one offsite circuit can be out of service has no direct physical impact on the plant and does not create any new accident initiators. The systems involved are accident mitigation systems. All of the possible impacts that the inoperable equipment may have on its supported systems were previously analyzed in the UFSAR and are the basis for the present TS Action statements and CTs. The impact of inoperable support systems for a given time duration was previously evaluated and any accident initiators created by the inoperable systems was evaluated. The lengthening of the time duration does not create any additional accident initiators for the plant.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The present offsite circuit TS CT limits were set to ensure that sufficient safety-related equipment is available for response to all accident conditions and that sufficient decay heat removal capability is available for a loss-of-coolant accident (LOCA) coincident with a loss of offsite power (LOOP) on one unit and simultaneous safe shutdown of the other unit. A slight reduction in the margin of safety is incurred during the proposed extended CT due to the increased risk that an event could occur in a 14-day period versus a 72-hour period. This increased risk is judged to be minimal due to the low probability of an event occurring during the extended CT and maintaining the minimum ECCS [emergency core cooling system]/decay heat removal requirements.

The slight reduction in the margin of safety from the extension of one offsite circuit current CT limit is not significant since the remaining operable offsite circuit, the emergency diesel generators, the Station Blackout (SBO) Diesel, the Southern Maryland Electric Cooperative (SMECO) delayed offsite circuit, and the FLEX diesel generators provide an effective defense-in-depth plan to support the station electrical plant configurations during the extended 14-day CT periods.

Operations personnel are fully qualified by normal periodic training to respond to, and mitigate, a Design Basis Accident, including the actions needed to ensure decay heat removal while CCNPP Unit 1 and Unit 2 are in the operational electrical configurations described within this submittal. Accordingly, existing procedures are in place that address safe plant shutdown and decay heat removal for situations applicable to those in the proposed CTs.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: August 31, 2018. A publicly-available version is in ADAMS under Accession No. ML18243A459.

Description of amendment request: The amendment request includes a departure from information in the Updated Final Safety Analysis Report (UFSAR) (which includes the plant-specific Design Control Document (DCD) Tier 2 information and involves related changes to plant-specific Tier 1 information, with corresponding changes to the associated combined license (COL) appendix C information. Specifically, the changes are proposed for reactor coolant system flow coast down curves in UFSAR and COL appendix C. Pursuant to the provisions of 10 CFR 52.63(b)(1), an exemption from elements of the design as certified in the 10 CFR part 52, appendix D, design certification rule is also requested for the plant-specific DCD Tier 1 material departures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not adversely affect the operation of any systems or equipment that initiate an analyzed accident or alter any structures, systems, and components (SSC) accident initiator or initiating sequence of events. The proposed changes do not adversely affect the physical design and operation of the RCPs [reactor coolant pumps] including as-installed inspections, testing, and maintenance

requirements, as described in the UFSAR. Therefore, the operation of the RCPs is not adversely affected. A CLOF [complete loss of flow] event is identified as an event that is sensitive to RCP coastdown. However, the proposed changes do not adversely affect the probability of a CLOF occurring. Therefore, the probabilities of the accidents previously evaluated in the UFSAR are not affected.

The proposed changes do not adversely affect the ability of the RCPs to perform its design functions. The design of the RCPs continues to meet the same regulatory acceptance criteria, codes, and standards as required by the UFSAR. The proposed changes do not adversely affect the prevention and mitigation of other abnormal events, *e.g.,* anticipated operational occurrences, earthquakes, floods and turbine missiles, or their safety or design analyses. Therefore, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes would not introduce a new failure mode, fault, or sequence of events that could result in a radioactive material release. The proposed changes do not alter the design, configuration, or method of operation of the plant beyond standard functional capabilities of the equipment. Therefore, this activity does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events which results in significant fuel cladding failures.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Safety margins are applied at many levels to the design and licensing basis functions and to the controlling values of parameters to account for various uncertainties and to avoid exceeding regulatory or licensing limits. The proposed changes maintain existing safety margins, and in some cases, provide additional margin. The proposed changes maintain the capabilities of the RCPs to perform its design functions. Therefore, the proposed changes satisfy the same design functions in accordance with the same codes and standards as stated in the UFSAR. These changes do not adversely affect any design code, function, safety analysis, safety analysis input or results, or design/safety margin. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, and no margin of safety is reduced.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant (Farley), Units 1 and 2, Houston County, Alabama

Southern Nuclear Operating Company, Inc., Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant (Hatch), Unit Nos. 1 and 2, City of Dalton, Georgia

Southern Nuclear Operating Company, Inc., (SNC) Docket Nos. 50–424, 50–425, 52–025, 52–026, Vogtle Electric Generating Plant (VEGP), Units 1, and 2, Burke County, Georgia

Date of amendment request: August 9, 2018. A publicly-available version is in ADAMS under Accession No. ML18226A094.

Description of amendment request: The amendments would modify technical specification (TS) 5.2.2.g to eliminate a dedicated shift technical advisor (STA) position at Farley and Hatch by allowing the STA functions to be combined with one or more of the required senior licensed operator positions. The Vogtle TS change aligns the facilities with equivalent wording. This proposed change also incorporates wording related to the modes of operation during which the individual meeting the requirements in TS 5.2.2.g is required and provides guidance that the same individual may provide advisory technical support for both units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The advisory technical support function and on-shift staffing requirements are not associated with an initiator of any accident previously evaluated, so the probability of accidents previously evaluated is unaffected by the proposed change. In addition, the proposed change does not alter the design or safety function of any safety related system. The proposed change emends the STA role as a function in lieu of a position and reduces the minimum required on-shift EP [emergency plan] staffing for [Hatch] and [Farley] by one. Minimum staffing studies were re-performed and confirmed on-shift staffing continues to be adequate to perform critical functions until relieved by the augmented emergency response organization (ERO) as required by 10 CFR 50.47(b)(2) and 10 CFR 50, Appendix E, Paragraph IV.A.9. As a result, manual operator action necessary to mitigate previously evaluated accidents continue to be persevered. Thus, the consequences of any accident are not affected by the proposed change.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change emends the STA role as a function in lieu of a position and reduces the minimum required on-shift EP staffing for [Hatch] and [Farley] by one. The proposed change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed), a change in the method of plant operation, or new operator actions. The proposed change does not introduce failure modes that could result in a new accident, and the change does not alter assumptions made in the safety analysis. As a result, there are no new accident scenarios, failure mechanisms, including no new single failures, introduced as a result of the proposed change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Safety margins are applied to the design and licensing basis functions and to the controlling values of parameters to account for various uncertainties and to avoid exceeding regulatory or licensing limits. The proposed change emends the STA role as a function in lieu of a position and reduces the minimum required on-shift EP staffing for [Hatch] and [Farley] by one. The change does not impact any specific values that define margin established in each plant's licensing basis and, as a result, does not result in exceeding or altering a design basis or safety limit (*i.e.,* the controlling numerical value for a parameter established in the [updated final safety analysis report] or the licenses). On-shift staffing continues to be adequate to perform critical functions until relieved by the augmented ERO as required by 10 CFR 50.47(b)(2) and 10 CFR 50, Appendix E, Paragraph IV.A.9.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.

NRC Branch Chief: Michael T. Markley.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: October 4, 2017, as supplemented by letters dated May 24, 2018, and June 14, 2018.

Brief description of amendment: The amendment revised Millstone Power Station, Unit No. 2, Technical Specification 6.19, ''Containment Leakage Rate Testing Program.'' Specifically, the amendment extends the Type A primary containment integrated leak rate test interval for Millstone Power Station, Unit No. 2, from 10 years to 15 years and the Type C local leak rate test interval to 75 months, and incorporates the regulatory positions stated in Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program.''

Date of issuance: September 25, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 335. A publicly-available version is in ADAMS under Accession No. ML18246A007; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–65: The Amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** January 2, 2018 (83 FR 163). The supplemental letters dated May 24, 2018, and June 14, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 2018.

No significant hazards consideration comments received: No.

Duke Energy Progress, LLC, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2 (Brunswick), Brunswick County, North Carolina

Date of amendment request: September 6, 2016, as supplemented by letters dated November 9, 2016; April 6 and November 1, 2017; and February 5, February 14, March 1, March 14, March 29 and April 10, 2018.

Brief description of amendments: The amendments approve a revision to the Technical Specifications (TSs) to allow plant operation from the currently licensed Maximum Extended Load Line Limit Analysis (MELLLA) domain to operate in the expanded MELLLA Plus domain under the previously approved Extended Power Uprate conditions, including a 2923 megawatt thermal rated core thermal power. The amendments expand the operating boundary without changing the maximum licensed core power and maximum licensed core flow.

Date of issuance: September 18, 2018.

Effective date: As of the date of issuance and shall be implemented no later than 60 days following startup from the 2019 Unit 2 refueling outage.

Amendment Nos.: 285 (Unit 1) and 313 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML18172A258; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–71 and DPR–62: Amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register:*** January 3, 2017 (82 FR 158). The supplemental letters dated November 9, 2016; April 6 and November 1, 2017; and February 5, February 14, March 1, March 14, March 29 and April 10, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 18, 2018.

No significant hazards consideration comments received: No.

Duke Energy Progress, LLC, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: October 3, 2017.

Brief description of amendments: The amendments revised Surveillance Requirement (SR) 3.8.4.5 contained in Technical Specification (TS) 3.8.4, ''DC Sources—Operating.''

Date of issuance: September 27, 2018.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment Nos.: 286 and 314. A publicly-available version is in ADAMS under Accession No. ML18243A298; documents related to these amendments

are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–71 and DPR–62: Amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register:*** March 13, 2018 (83 FR 10915).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 27, 2018.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of amendment request: August 31, 2017, as supplemented by letter dated April 16, 2018.

Brief description of amendment: The amendment revised the Palisades Nuclear Plant (PNP) Site Emergency Plan (SEP) for the permanently shut down and defueled condition. The proposed PNP SEP changes would revise the shift staffing and Emergency Response Organization (ERO) staffing.

Date of issuance: September 24, 2018.

Effective date: Upon the licensee's submittal of the certifications required by Title 10 of the *Code of Federal Regulations,* Part 50, Section 82(a)(1) and shall be implemented within 90 days from the amendment effective date.

Amendment No.: 267. A publicly-available version is in ADAMS under Accession No. ML18170A219; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–20: Amendment revised the Renewed Facility Operating License.

Date of initial notice in ***Federal Register:*** November 21, 2017 (82 FR 55403). The supplemental letter dated April 16, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 2018.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic

Power Station, Units 2 and 3, York County, Pennsylvania

Date of amendment request: September 29, 2017, as supplemented by letters dated August 1, August 14, and September 14, 2018.

Brief description of amendments: The amendments added new actions for an inoperable battery, battery charger, and alternate battery charger testing criteria. A longer completion time for an inoperable battery charger will allow additional time for maintenance and testing. Additionally, a number of surveillance requirements are relocated to licensee control. Monitoring of battery cell parameter requirements and performance of battery maintenance activities are relocated to a licensee-controlled program, the Peach Bottom Atomic Power Station, Units 2 and 3, Technical Requirements Manual. The changes in the Technical Specification requirements are consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–500, Revision 2, ''DC Electrical Rewrite—Update to TSTF–360.''

Date of issuance: September 28, 2018.

Effective date: As of the date of issuance and shall be implemented by no later than September 30, 2019.

Amendment Nos.: 320 (Unit 2) and 323 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML18249A240; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** November 21, 2017 (82 FR 55405), The supplemental letters dated letters dated August 1, August 14, and September 14, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 28, 2018.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: April 3, 2018, as supplemented by letter dated August 22, 2018.

Brief description of amendment: This amendment changes Technical Specification Table 4.3–1, ''Reactor Trip System Instrumentation Surveillance Requirements'' Functional Units 17.A, Turbine Trip—Low Fluid Oil Pressure, and 17.B, Turbine Trip—Turbine Stop Valve Closure. Specifically, the Trip Actuating Device Operational Test column of Table 4.3–1 is revised to delete performing the 17.A and 17.B surveillance requirements prior to reactor startup (S/U) and replacing this requirement with a reference to Table Notation (8), that states 17.A and 17.B surveillance requirements will be conducted ''Prior to entering MODE 1 whenever the unit has been in MODE 3.''

Date of issuance: October 5, 2018.

Effective date: As of the date of issuance and shall be implemented within 7 days of issuance.

Amendment No.: 212. A publicly-available version is in ADAMS under Accession No. ML18253A115, documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–12: Amendment revised the Renewed Facility Operating License and the TS.

Date of initial notice in ***Federal Register:*** May 22, 2018 (83 FR 23736). The supplemental letter dated August 22, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 2018.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: November 17, 2017, as supplemented by letter dated June 8, 2018.

Brief description of amendment: The amendment authorized changes to the VEGP Units 3 and 4 Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant-specific Design Control Document Tier 2* and associated Tier 2 information and a Combined License (COL) License Condition which references a UFSAR section impacted by one of the changes. Specifically, the amendment revises

COL License Condition 2.D.(4)(b), requirement to perform the Natural Circulation test (first plant test) using the steam generators identified in UFSAR, Subsection 14.2.10.3.6, and Passive Residual Heat Removal (PRHR) Heat Exchanger test (first plant test) identified in UFSAR, Subsection 14.2.10.3.7, as part of the Initial Criticality and Low-Power Testing requirements. The changes to the Natural Circulation test suspend the requirements of COL Appendix A, Technical Specification 3.4.4 during performance of the test. Also the amendment changes the PRHR Heat Exchanger Test to be performed as part of the Power Ascension Testing as specified in COL License Condition 2.D.(5)(b) instead of as part of the Initial Criticality and Low-Power Testing requirements as currently specified in COL License Condition 2.D.(4)(b).

Date of issuance: July 11, 2018.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 132 (Unit 3) and 131 (Unit 4). A publicly-available version is in ADAMS under Accession No. ML18179A336. The documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Combined Licenses Nos. NPF–91 and NPF–92: Amendment revised the Facility Combined Licenses.

Date of initial notice in ***Federal Register:*** February 13, 2018 (83 FR 6218). The June 8, 2018, letter provided additional information that did not change the scope or the conclusions of the No Significant Hazard Determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 11, 2018.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: September 8, 2018.

Description of amendment: The amendment proposes changes to (1) the design of the Protection and Safety Monitoring (PMS) system and associated changes to Chapter 15 transient and accident analyses, (2) changes to technical specifications for the moderator temperature coefficient (MTC), and (3) additional changes to technical specifications for power distributions and the On-Line Power Distribution Monitoring System (OPDMS). The proposed changes to the PMS system and the crediting of trips in the Chapter 15 transient and accident analyses address issues caused by increased uncertainties in the ex-core nuclear instrumentation during mechanical shim operations. The proposed changes to the technical specifications for MTC modify the surveillance of MTC to address surveillance issues at beginning of life and end of life. The proposed changes to technical specifications for the power distribution and OPDMS update these technical specifications to accurately reflect system capabilities.

Date of issuance: September 27, 2018.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 144 (Unit 3) and 143 (Unit 4). A publicly-available version is in ADAMS under Accession No. ML18239A192; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Combined Licenses No. NPF–91 and NPF–92: Amendment revised the Facility Combined Licenses.

Date of initial notice in ***Federal Register:*** October 24, 2018 (82 FR 49234).

The Commission's related evaluation of the amendment is contained in the Safety Evaluation dated September 27, 2018.

No significant hazards consideration comments received: No.

Susquehanna Nuclear, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: September 20, 2017, as supplemented by letters dated February 16, 2018, and May 15, 2018.

Brief description of amendments: The amendments revised Technical Specification requirements associated with ''operations with a potential for draining the reactor vessel [OPDRVs]'' with new requirements on reactor pressure vessel water inventory control to protect Safety Limit 2.1.1.3. Safety Limit 2.1.1.3 requires reactor pressure vessel water level to be greater than the top of active irradiated fuel. The changes are based on Technical Specifications Task Force (TSTF) Traveler TSTF–542, Revision 2, ''Reactor Pressure Vessel Water Inventory Control.''

Date of issuance: September 26, 2018.

Effective date: As of the date of issuance and shall be implemented on both units no later than initial entry into Mode 4 for Unit 2 during the Spring 2019 Unit 2 refueling outage.

Amendment Nos.: 271 for Unit 1 and 253 for Unit 2. A publicly-available version is in ADAMS under Accession No. ML18222A203; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** November 21, 2017 (82 FR 55414). The supplemental letters dated February 16, 2018, and May 15, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 26, 2018.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: August 15, 2017. As supplemented by letters dated February 5, March 27, and July 27, 2018.

Brief description of amendments: The amendments revised the Browns Ferry Nuclear Plant, Units 1, 2, and 3, Technical Specification 5.5.12, ''Primary Containment Leakage Rate Testing Program,'' by adopting Nuclear Energy Institute (NEI) 94–01, Revision 3–A, ''Industry Guideline for Implementing Performance-Based Option of 10 CFR part 50, Appendix J,'' as the implementation document for the performance-based Option B of 10 CFR part 50, appendix J. The amendments allow the licensee to extend the Type A containment integrated leak rate testing interval from 10 years to 15 years and the Type C local leakage rate testing intervals from 60 months to 75 months.

Date of issuance: September 27, 2018.

Effective date: As of the date of issuance and shall be implemented prior to Unit 2 startup following the spring 2019 refueling outage.

Amendment Nos.: 305 (Unit 1); 328 (Unit 2); and 288 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML18251A003; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** November 21, 2017 (82 FR 55415). The supplemental letters dated February 5, March 27, and July 27, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluations dated September 27, 2018.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry PowerStation, Unit Nos. 1 and 2, Surry County, Virginia.

Date of amendment request: Dated November 7, 2017, as supplemented by letters dated June 21, 2018, and October 3, 2018.

Brief description of amendments: The amendments revised the Surry Power Station (SPS) Units 1 and 2 Technical Specification (TS) 3.16, ''Emergency Power System,'' to provide a temporary, one-time 21-day allowed outage time (AOT) for replacement of Reserve Station Service Transformer (RSST) C and associated cabling.

Date of issuance: October 5, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 293 and 293. A publicly-available version is in ADAMS under Accession No. ML18261A099; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** February 13, 2018, 83 FR 6236. The supplemental letters dated June 21, 2018, and October 3, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 2018.

No significant hazards consideration comments received: No.

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed no significant hazards consideration determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License or Combined License, as applicable, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: August 24, 2018, as supplemented by letters dated August 31, September 11, and September 19, 2018.

Description of amendment request: The amendment revised the Summer, Unit No. 1, Technical Specifications (TS) for a one-time extension to the TS surveillance requirement of channel calibrations of the Core Exit

Temperature Instrumentation. The surveillance requirement of TS 4.3.3.6 was revised to allow a one-time extension of the frequency of the Core Exit Temperature Instrumentation Channel Calibrations from ''every refueling outage'', which has been interpreted as 18 months, to ''every 19 months.''

Date of issuance: September 25, 2018.

Effective date: As of its issuance date and shall be implemented upon approval.

Amendment No.: 211. A publicly-available version is in ADAMS under Accession No. ML18260A027; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

[Renewed] Facility Operating License No. NPF–12: The amendment revised the facility operating license.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. An individual 14-day notice for comments was published in the **Federal Register** on September 10, 2018 (83 FR 45688). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. One comment from a member of the public was received, however it was not related to the proposed no significant hazards consideration determination or to the proposed license amendment request. The notice also provided an opportunity to request a hearing by November 9, 2018, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The supplemental letters dated August 31, September 11, and September 19, 2018 provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on September 10, 2018.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a Safety Evaluation dated September 25, 2018.

Attorney for licensee: Kathryn M. Sutton, Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue NW, Washington, DC 20004.

NRC Branch Chief: Michael T. Markley.

Dated at Rockville, Maryland, this 10th day of October, 2018.

For the Nuclear Regulatory Commission.

Kathryn M. Brock,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–22654 Filed 10–22–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

658th Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on November 1–3, 2018, Three White Flint North, 11601 Landsdown Street, North Bethesda, MD 20852.

Thursday, November 1, 2018, Conference Room 1C3 & 1C5, Three White Flint North, 11601 Landsdown Street, North Bethesda, MD 20852

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:00 a.m.: Waterford Steam Electric Station, Unit 3 License Renewal Application (Open)—The Committee will have briefings by and discussion with representatives of the NRC staff and Entergy regarding the safety evaluation associated with the subject license renewal application.

10:45 a.m.–12:45 p.m.: River Bend Nuclear Generating Station, Unit 1 License Renewal Application (Open)—The Committee will have briefings by and discussion with representatives of the NRC staff and Entergy regarding the safety evaluation associated with the subject license renewal application.

1:45 p.m.–2:45 p.m.: Preparation for Meeting with Commission (Open)—The Committee will prepare for the upcoming meeting with the Commission in December.

3:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

Friday, November 2, 2018, Conference Room 1C3 & 1C5, Three White Flint North, 11601 Landsdown Street, North Bethesda, MD 20852

8:30 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

10:15 a.m.–12:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

1:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports and retreat items.

Saturday, November 3, 2018, Conference Room 1C3 & 1C5, Three White Flint North, 11601 Landsdown Street, North Bethesda, MD 20852

8:30 p.m.–12:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports and retreat items.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 4, 2017 (82 FR 46312). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience. The bridgeline number for the meeting is 866–822–3032, passcode 8272423#.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC website at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/#ACRS/*.

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–6702), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Note: This notice is late due to the cancellation of the New Instrumentation & Controls Review Guidance for Future Reactor Designs meeting which was initially on this schedule for Thursday, November 1, 2018 at 1:45 p.m.

Dated: October 17, 2018.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2018–23043 Filed 10–22–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of October 22, 29, November 5, 12, 19, 26, 2018.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 22, 2018

Thursday, October 25, 2018

9:00 a.m. Briefing on Digital Instrumentation and Control (Public) (Contact: Jason Paige: 301–415–1474)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of October 29, 2018—Tentative

Monday, October 29, 2018

9:00 a.m. Transformation at the NRC (Public) (Contact: Kevin Williams: 301–415–1611)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of November 5, 2018—Tentative

There are no meetings scheduled for the week of November 5, 2018.

Week of November 12, 2018—Tentative

There are no meetings scheduled for the week of November 12, 2018.

Week of November 19, 2018—Tentative

There are no meetings scheduled for the week of November 19, 2018.

Week of November 26, 2018—Tentative

Thursday, November 29, 2018

10:00 a.m. Briefing on Security Issues (Closed Ex. 1)

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* Braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or you may email *Patricia.Jimenez@nrc.gov* or *Wendy.Moore@nrc.gov.*

Dated at Rockville, Maryland, on October 19, 2018.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2018–23253 Filed 10–19–18; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8943–MLA–2; ASLBP No. 13–926–01–MLA–BD01]

Atomic Safety and Licensing Board Panel

Before the Licensing Board: G. Paul Bollwerk, III, Chairman, Dr. Richard E. Wardwell, Dr. Thomas J. Hirons; In the Matter of: Crow Butte Resources, Inc. (Marsland Expansion Area); *Amended Notice of Hearing* (Confirming Oral Limited Appearance Session and Updating Start Time for Evidentiary Hearing).

October 18, 2018.

On July 27, 2018, the Atomic Safety and Licensing Board issued a Notice of Hearing, which was subsequently published in the **Federal Register**, indicating that it would convene an evidentiary hearing and potentially conduct a 10 CFR 2.315(a) oral limited appearance session in connection with this proceeding regarding intervenor Oglala Sioux Tribe's challenge to the May 2012 application of Crow Butte Resources, Inc., (CBR) seeking to amend the existing 10 CFR part 40 source materials license for its Crow Butte in situ uranium recovery (ISR) site to authorize CBR to operate a satellite ISR facility within the Marsland Expansion Area in Dawes County, Nebraska. *See* Notice of Hearing (Notice of Evidentiary Hearing and Opportunity To Provide Oral, Written, and Audio-Recorded Limited Appearance Statements); In the Matter of Crow Butte Resources, Inc. (Marsland Expansion Area), 83 FR 37828, 37828–30 (Aug. 2, 2018). Revisions to the information in that notice regarding the oral limited appearance session and the start time for the evidentiary hearing are set forth below.

A. Confirming Oral Limited Appearance Session Will Be Held

In the notice's section E, ''Submitting a Request to Make an Oral Limited Appearance Statement,'' the Board indicated that it was accepting requests to make an oral limited appearance

during a scheduled Sunday, October 28, 2018 session to be held from 2:00 p.m. to 4:00 p.m. Mountain Time (MT) at the Scottsbluff Room, Chadron State College Student Center, 1000 Main Street, Chadron, Nebraska. In addition, the Board stated it was reserving the right to cancel that session if by mid-October 2018 sufficient expressions of interest from the public had not been received. The Board wishes to confirm that, because a sufficient number of written requests to make an oral statement have been received, *the oral limited appearance session will be conducted as scheduled.*

In addition, the Board encourages anyone interested in making an oral limited appearance statement at the October 28, 2018 session to provide a written request to do so. Those submitting a timely written request to make an oral statement, *i.e.,* a request received *by 5:00 p.m. Eastern Time (ET) on Friday, October 26, 2018,* will be given priority over those who have not provided such a request.

Written requests to make an oral statement should be submitted to: *Mail:* Administrative Judge G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, Mail Stop T–3A02, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; *Fax:* (301) 415–5206 (verification (301) 415–5277); *Email: paul.bollwerk@nrc.gov* and *sarah.ladin@nrc.gov.*

B. Evidentiary Hearing Start Time

In section B of the notice, the Board indicated that the evidentiary hearing would convene at 8:30 a.m. MT on Tuesday, October 30, 2018. As a result of recent developments concerning witness availability, *see* Licensing Board Memorandum and Order (Scheduling Prehearing Conference and Providing Teleconference Agenda and Hearing Presentation Order) (Oct. 3, 2018) at 4 & n.2 (unpublished), the Board has decided to begin the hearing one-half hour earlier, *i.e.,* at *8:00 a.m. MT on October 30, 2018.* The hearing location at the Crawford Community Building, 1005 1st Street, Crawford, Nebraska, remains the same.

Although the start times for the additional two days that the hearing currently is anticipated to last will be set by the Board based on the progress of the proceeding, if the Board decides to start the hearing at a time other than 8:00 a.m. MT on any given day, it will provide an information update that will be available by 6:00 a.m. MT on that day by calling (800) 368–5642, extension 5036 (available between 7:00 a.m. and 9:00 p.m. ET, Monday through Friday, except federal holidays), or by calling (301) 415–5036 (available seven days a week, twenty-four hours a day).

It is so *ordered.*

For the Atomic Safety and Licensing Board.

Dated: Rockville, Maryland, October 18, 2018.

George P. Bollwerk III,

Chairman, Administrative Judge.

[FR Doc. 2018–23085 Filed 10–22–18; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission staff will hold a public roundtable on Thursday, October 25, 2018 at 10:30 a.m. and Friday, October 26, 2018 at 9:00 a.m.

PLACE: The roundtable will be held in the Auditorium at the Commission's headquarters, 100 F Street NE, Washington, DC.

STATUS: The meeting will begin at 10:30 a.m. on October 25 and 9:00 a.m. on October 26 and will be open to the public. To ensure sufficient seating for members of the public wishing to attend in-person, registration is encouraged. Doors will open at 9:30 a.m. on October 25 and 8:00 a.m. on October 26. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED: The Commission staff will host a two-day roundtable on market data and market access. The roundtable is open to the public and the public may submit written comments here. This Sunshine Act notice is being issued because a majority of the Commission may attend the roundtable.

The roundtable will focus on assessing current market data products, market access services, and their associated fees, and assessing the elements, governance and funding of core data infrastructure, as well as public transparency to improve such products and services.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: October 18, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–23179 Filed 10–19–18; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Fixed Income Market Structure Advisory Committee will hold a public meeting on Monday, October 29, 2018 at 9:30 a.m.

PLACE: The meeting will be held in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE, Washington, DC.

STATUS: The meeting will begin at 9:30 a.m. and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED: On October 3, 2018, the Commission published notice of the Committee meeting (Release No. 34–84356), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting will include updates and presentations from the FIMSAC subcommittees.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: October 18, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–23178 Filed 10–19–18; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84442; File No. SR–CboeEDGX–2018–047]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on Cboe EDGX Exchange, Inc.

October 17, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

3, 2018, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with 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

The Exchange filed a proposal to amend the fee schedule applicable to Members [5] and non-Members of the Exchange pursuant to Exchange Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule to adopt new fee code DM, effective October 3, 2018. Such flag will be yielded when Members add liquidity in the discretionary range using a MidPoint Discretionary Order type (''MDO''), which order type was recently adopted by the Exchange. In sum, an MDO is a Limit Order that is executable at the National Best Bid (''NBB'') for an order to buy or the National Best Offer (''NBO'') for an order to sell while resting on the EDGX Book, with discretion to execute at prices to and including the midpoint of the National Best Bid and Offer (the ''NBBO'').[6] MDO orders can be displayed or hidden. The MDO has two discrete components—the displayed portion that is pegged to the NBB or NBO, and a non-displayed portion which gives discretion to execute to the mid-point of the NBBO, subject to certain limits. The Exchange believes the proposed pricing is reflective of this concept. Particularly, the Exchange notes that displayed MDO orders that add liquidity at the bid or offer will receive one of the existing applicable fee codes, B, V, Y, 3, or 4 and receive the standard rebate for adding liquidity. The standard rebate for adding liquidity in securities priced at or above $1.00 is $0.0020 per share and $0.00003 per share for securities priced below $1.00. Non-displayed MDO orders that add liquidity at the bid or offer will receive the existing non-displayed add fee code, HA. The rebate for orders yielding fee code HA is $0.00150 per share for securities priced at or above $1.00 and $0.00003 for securities priced below $1.00. The Exchange lastly proposes that Members that add liquidity in the discretionary range using a MDO order will receive a rebate of $0.0015 per share for securities priced at or above $1.00 and provide a rebate of $0.00003 per share for securities priced below $1.00. The Exchange notes that the proposed pricing for orders that add liquidity using MDO orders within the discretionary range is the same as the pricing for non-displayed MDO orders that add liquidity at the bid or offer (*i.e.,* orders yielding fee code HA). The Exchange notes that pursuant to Footnote 11 of the Fees Schedule, orders that add non-displayed liquidity (*e.g.,* orders yielding fee code HA) may not receive a rebate if the order has a Discretionary Range instruction. As such, the Exchange proposes to adopt a new fee code, DM, to be appended to all MDO orders that add liquidity within the discretionary range.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, as 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 the proposed rebates for orders yielding fee code DM are reasonable because the amount of the rebates are the same as the respective rebates applied to other non-displayed orders.[9] The Exchange believes the proposed rebates for orders yielding DM is equitable and not unfairly discriminatory because it applies uniformly to all members. The Exchange also notes that it believes it is equitable and reasonable to provide a rebate to MDOs because MDOs add liquidity at the NBBO while offering price improvement opportunities to incoming contra-side orders that execute within its discretionary range. The Exchange believes it's equitable and not unfairly discriminatory to provide a lower rebate to non-displayed add MDO orders (*i.e.,* orders yielding fee codes HA and DM) compared to displayed add MDO orders (*i.e.,* orders yielding fee codes, B, V, Y, 3, or 4) because such pricing incentivizes the entry of displayed liquidity on the Exchange, which is consistent with the Exchange's pricing generally.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that this change represents a significant departure from previous pricing offered by the Exchange or from pricing offered by the Exchange's competitors. The proposed rebates would apply uniformly to all Members, and Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. Further, excessive fees would serve to impair an exchange's ability to compete for order flow and members rather than burdening competition. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[6] *See* Securities Exchange Act Release No. 84327 (October 1, 2018) (SR–CboeEDGX–2018–041) (notice of filing and immediate effectiveness of proposed rule change to adopt MDOs).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] *See e.g.,* Cboe EDGX U.S. Equities Exchange Fee Schedule, Fee Code and Associated Fees, Fee Code HA.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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 [10] and paragraph (f) of Rule 19b–4 thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGX–2018–047 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–CboeEDGX–2018–047. 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 this filing will also 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–CboeEDGX–2018–047 and should be submitted on or before November 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–23038 Filed 10–22–18; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 3:00 p.m. on Thursday, October 25, 2018.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Jackson, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: October 18, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–23177 Filed 10–19–18; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84444; File No. SR–NYSE–2018–49]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List

October 17, 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 October 4, 2018, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to (1) adopt an alternate way to qualify for the Tier 3 Adding Credit; (2) add a new charge for transactions that remove liquidity from the Exchange; and (3) make certain non-substantive, clarifying changes. The

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Exchange proposes to implement these changes to its Price List effective October 4, 2018.[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) adopt an alternate way to qualify for the Tier 3 Adding Credit; (2) add a new charge for transactions that remove liquidity from the Exchange; and (3) make certain non-substantive, clarifying changes.

The Exchange proposes to implement these changes to its Price List effective October 4, 2018.

Tier 3 Adding Credit

The Exchange currently provides an equity per share credit of $0.0018 per transaction for all orders, other than MPL and Non-Display Reserve orders, for transactions in stocks with a share price of $1.00 or more when adding liquidity to the Exchange if the member organization (1) has an average daily trading volume (''ADV'') that adds liquidity to the Exchange during the billing month (''Adding ADV'')[5] that is at least 0.40% of NYSE consolidated average daily volume (''CADV''), and (2) executes market at-the-close (''MOC'') and limit at-the-close (''LOC'') of at least 0.05% of NYSE CADV.

The Exchange proposes to provide an alternate way for member organizations to qualify for the Tier 3 Adding Credit. As proposed, the Exchange would provide an equity per share credit of $0.0018 per transaction for all orders, other than MPL and Non-Display Reserve orders, for transactions in stocks with a share price of $1.00 or more when adding liquidity to the Exchange if the member organization (1) has an Adding ADV that is at least 0.35% of NYSE CADV, (2) executes MOC and LOC orders of at least 0.05% of NYSE CADV, and (3) has an Adding ADV in MPL orders of at least 400,000 shares.

Charges for Removing Liquidity

The Exchange currently charges a fee of $0.00275 for non-Floor broker transactions that remove liquidity from the Exchange, including those of DMMs. The Exchange also currently charges $0.0030 for non-Floor broker transactions removing liquidity from the Exchange by member organizations with an Adding ADV, excluding any liquidity added by a DMM, of less than 250,000 ADV on the Exchange during the billing month.

The Exchange proposes to add a slightly higher intermediate fee of $0.00280 for non-Floor broker transactions that remove liquidity from the Exchange by member organizations with an Adding ADV, excluding any liquidity added by a DMM, that is at least 250,000 ADV on the NYSE in Tape A Securities and less than 500,000 ADV on the NYSE in Tape B and Tape C securities combined during the billing month.

For example, in a given month, a member organization with an Adding ADV, excluding any liquidity added by a DMM, of 250,000 or more on the Exchange in Tape A securities would qualify for a fee of $0.00275 per share in Tape A securities.

- If that same member organization had an Adding ADV of 300,000 in Tape B securities and an Adding ADV of 250,000 in Tape C securities, or 550,000 ADV combined, that member would continue to receive a fee of $0.00275 per share in Tape A securities under the proposed change.
- If that same member organization had an Adding ADV in Tape B and Tape C securities combined of less than 500,000, but still had an Adding ADV of 250,000 or more in Tape A securities, that member organization would receive a fee of $0.0028 per share in Tape A securities under the proposed change.
- If that member organization had an Adding ADV in Tape B and Tape C securities combined of less than 500,000, and also had an Adding ADV of less than 250,000 in Tape A securities, that member organization would receive a fee of $0.0030 per share in Tape A securities under the proposed change.

Clarifying, Non-Substantive Changes

First, the Exchange proposes to add a sentence to footnote * to clarify that, unless otherwise specified, references to volumes, quoting, ADV and CADV in the Price List refer to Tape A securities.

Second, the Exchange proposes to make a non-substantive, clarifying change to the annual trading license fee. Currently, for all member organizations, including Floor brokers with more than ten trading licenses but excluding Regulated Only Members, the trading license fee is $50,000 for the first license held by the member organization unless one of the other rates is deemed applicable.[6] The current Price List provides that the annual fee applies to ''All member organizations with 10 or more trading licenses.'' The Exchange proposes a non-substantive change to clarify this language by adding the phrase '', including Floor brokers'' after ''All member organizations'' and the parenthetical ''excluding Regulated Only Members'' at the end of the entry.

* * * * *

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] 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.

Tier 3 Adding Credit

The Exchange believes that providing an additional way to qualify for the Tier 3 Adding Credit is reasonable, equitable and not an unfairly discriminatory allocation of fees because it would encourage additional liquidity on the Exchange and because members and

[4] The Exchange originally filed to amend the Price List on September 28, 2018 (SR–NYSE–2018–45). SR–NYSE–2018–45 was subsequently withdrawn and replaced by this filing.

[5] Footnote 2 to the Price List defines ADV as ''average daily volume'' and ''Adding ADV'' as ADV that adds liquidity to the Exchange during the billing month. The Exchange is not proposing to change these definitions.

[6] *See* Securities Exchange Act Release No. 82563 (January 22, 2018), 83 FR 3799, 3801 (January 26, 2018) (SR–NYSE–2018–03).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) & (5).

member organizations benefit from the substantial amounts of liquidity that are present on the Exchange. The Exchange believes the proposed changes are equitable and not unfairly discriminatory because it would continue to encourage member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed changes will encourage the submission of additional liquidity to a national securities exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity that are present on the Exchange. The proposed changes will also encourage the submission of additional MPL orders that add liquidity, thus providing price improving liquidity to market participants and increasing the quality of order execution on the Exchange's market, which benefits all market participants. Moreover, the proposed changes are equitable and not unfairly discriminatory because they would apply equally to all qualifying member organizations, including Floor brokers, that submit orders to the NYSE and add liquidity to the Exchange and do not currently meet the requirements for higher credits for Adding Tiers 1, 2, and 3.

Charges for Removing Liquidity

The Exchange believes that introducing a slightly higher charge than the current lowest charge of $0.00275 for non-Floor broker transactions that remove liquidity from the Exchange for member organizations with an Adding ADV, excluding DMM liquidity, of at least 250,000 ADV on NYSE Tape A and less than 500,000 ADV on the NYSE in Tape B and Tape C securities combined during the billing month is reasonable. The Exchange believes that the proposed rate change will incentivize submission of additional liquidity in Tape B and Tape C securities to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange also believes that the proposed fee is equitable because it would apply to all similarly situated member organizations that add liquidity in Tape B or Tape C securities.

The proposed fee also is equitable and not unfairly discriminatory because it would be consistent with the applicable rate on other marketplaces. For example, Nasdaq PSX provides a lower fee per share for removing liquidity, $0.0028 in Tape A and B securities and $0.0029 in Tape C securities, if a firm removes 0.065% or more of Consolidated Volume; otherwise, Nasdaq PSX imposes a charge of $0.0030 per share for removing liquidity.[9] Given the Exchange's and Nasdaq PSX's relative size and market share, the Exchange believes that Nasdaq PSX remove requirement of 0.065%, which would be 4.55 million shares ADV in a month where CADV is 7 billion shares, is comparable to the Exchange's 250,000 ADV and 500,000 ADV adding requirements. The Exchange notes that since the requirement is for Tape B and Tape C securities combined, member organizations can meet the requirement by adding liquidity in either Tape B or Tape C securities, or both. The Exchange further notes that other marketplaces have tiers with adding requirements in specific tapes to qualify for a rate in securities on another tape. For example, to be eligible for a $0.0020 adding credit in Tape C securities on Nasdaq, firms are required to average a minimum of 250,000 shares added per day in Tape A or Tape B securities (combined); otherwise, the Tape C credit for adding liquidity is $0.0015.[10]

Non-Substantive, Clarifying Changes

The Exchange believes that the proposed non-substantive, clarifying changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because they are designed to provide greater specificity and clarity to the Price List, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. The proposed change would not alter the application of any fees or rebates on the Price List. As such, the proposed changes would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national exchange system. In particular, the Exchange believes that the proposed change would provide greater clarity to members and member organizations and the public regarding the Exchange's Rules. It is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[11] 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 change would foster liquidity provision and stability in the marketplace, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. In this regard, the Exchange believes that the transparency and competitiveness of attracting additional executions on an exchange market would encourage competition. The Exchange also believes that the proposed rule change is designed to make non-substantive technical corrections and update the Exchange's Price List in order to provide the public and investors with a Price List that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

Finally, 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 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 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 member organizations or competing order execution venues to maintain their

[9] *See https://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing.*

[10] *See https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

[11] 15 U.S.C. 78f(b)(8).

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) [12] of the Act and subparagraph (f)(2) of Rule 19b–4 [13] 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) [14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2018–49 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–NYSE–2018–49. 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–2018–49 and should be submitted on or before November 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–23039 Filed 10–22–18; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The TVA Regional Resource Stewardship Council (RRSC) will hold a meeting on Monday and Tuesday, November 5–6, 2018, to consider various matters regarding River Operations programs.

The RRSC was established to advise TVA on its natural resources and stewardship activities and the priority to be placed among competing objectives and values. Notice of this meeting is given under the Federal Advisory Committee Act (FACA).

DATES: The meeting will be held November 5–6, 2018. Monday's meeting will run from 10 a.m. to 12 p.m., EST, while Tuesday's meeting will run from 8:30 a.m. to 12 p.m., EST.

ADDRESSES: The meeting will be held at the Tennessee Valley Authority Auditorium, 400 W. Summit Hill Drive, Knoxville, Tennessee 37902. An individual requiring special accommodation for a disability should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Barbie Perdue, 865–632–6113, *baperdue@tva.gov.*

SUPPLEMENTARY INFORMATION: The meeting agenda includes the following items:

1. Introductions
2. Programmatic Agreements update
3. River Management presentation
4. Cultural Resource Management
5. Natural Resources program updates
6. Public Comments
7. Council Discussion and Advice

The meeting is open to the public. Comments from the public will be accepted Tuesday, November 6 starting at 9:30 a.m., EST, for 60 minutes. Registration to speak is from 8 a.m. to 9 a.m., EST, at the door. TVA will set time limits for providing oral comments, once registered. Handout materials should be limited to one printed page. Written comments may be sent to the RRSC at any time through links on TVA's website at *www.tva.com/rrsc* or by mailing to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 9D, Knoxville, Tennessee 37902.

Dated: October 17, 2018.

Joseph J. Hoagland,

Vice President, Enterprise Relations and Innovation, Tennessee Valley Authority.

[FR Doc. 2018–23105 Filed 10–22–18; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2018–0014; Dispute Number WT/DS546]

WTO Dispute Settlement Proceeding Regarding United States—Safeguard Measure on Imports of Large Residential Washers

AGENCY: Office of the United States Trade Representative.

ACTION: Notice with request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is

providing notice that the Republic of Korea (Korea) has requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* (WTO Agreement) concerning the safeguard measure in effect on imports of large residential washers. You can find that request at *www.wto.org* in a document designated as WT/DS546/4. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments during the course of the dispute settlement proceedings, you should submit your comment on or before November 15, 2018, to be assured of timely consideration by USTR.

ADDRESSES: USTR strongly prefers electronic submissions made the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments in Section III below. The docket number is USTR–2018–0014. For alternatives to online submissions, please contact Sandy McKinzy at (202) 395–9483 before transmitting a comment and in advance of the relevant deadline.

FOR FURTHER INFORMATION CONTACT: Assistant General Counsel Juli Schwartz, (202) 395–9588.

SUPPLEMENTARY INFORMATION:

I. Background

Section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires notice and opportunity for comment after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Pursuant to this provision, USTR is providing notice that Korea has requested a dispute settlement panel pursuant to the WTO *Understanding on Rules Procedures Governing the Settlement of Disputes* (DSU). The panel will hold its meetings in Geneva, Switzerland.

II. Major Issues Raised by Korea

On May 14, 2018, Korea requested consultations concerning the safeguard measure in effect pursuant to Proclamation 9594 of January 23, 2018—To Facilitate a Positive Adjustment to Competition from Imports of Large Residential Washers (83 FR 3553, January 25, 2018). You can find the consultation request at *www.wto.org* in a document designated as WT/DS546/1. Korea and the United States held consultations on June 26, 2018.

On August 14, 2018, Korea filed a request for the establishment a WTO dispute settlement panel. In its request for the establishment of a panel, Korea alleges that the United States' safeguard action is inconsistent with Articles 1, 2.1, 2.2, 3.1, 3.2, 4.1, 4.2, 5.1, 7.1, 7.4, 8.1, 12.1, 12.2 and 12.3 of the *Agreement on Safeguards;* and Articles I:1, II, X:3 and XIX:1(a) of the *General Agreement on Tariffs and Trade 1994.* The WTO Dispute Settlement Body established a panel on September 26, 2018.

III. Public Comments: Requirements for Submissions

USTR invites written comments concerning the issues raised in this dispute. All submissions must be in English and sent electronically via *www.regulations.gov*.

To submit comments via *www.regulations.gov,* enter docket number USTR–2018–0014 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 by selecting ''notice'' under ''document type'' on the left side of the search-results page, 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.

The *www.regulations.gov* website allows users to provide comments by filling in a ''type comment'' field, or by attaching a document using an ''upload file'' field. USTR prefers that comments be provided in an attached document. If you attach a document, it is sufficient to type ''see attached'' in the ''type comment'' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''type comment'' field.

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 and bottom of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. If you request business confidential treatment, you must certify in writing that disclosure of the information would endanger trade secrets or profitability, and that the information would not customarily be released to the public. Filers of submissions 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 ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments or rebuttal comments. For alternatives to online submissions, please contact Sandy McKinzy at (202) 395–9483 before transmitting a comment and in advance of the relevant deadline.

USTR may determine that information or advice contained in a comment, other than business confidential information, is confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If a submitter believes that information or advice is confidential, s/he must clearly designate the information or advice as confidential and mark it as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page, and provide a non-confidential summary of the information or advice.

Pursuant to Section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number USTR–2018–0014, accessible to the public at *www.regulations.gov*. The public file will include non-confidential public comments USTR receives regarding the dispute. If a dispute settlement panel is convened, or in the event of an appeal from a panel, USTR will make the following documents publicly available at *www.ustr.gov*: The U.S. submissions and any non-confidential summaries of submissions received from other participants in the dispute. If a dispute settlement panel is convened, or in the event of an appeal from a panel, the report of the panel, and, if applicable, the report of the Appellate Body, will also be available on the website of the World Trade Organization, at *www.wto.org*.

Juan Millan,

Assistant United States Trade Representative for Monitoring and Enforcement, Office of the U.S. Trade Representative.

[FR Doc. 2018–23055 Filed 10–22–18; 8:45 am]

BILLING CODE 3290–F9–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. DOT–NHTSA–2018–0091]

Notice of Agency Information Collection and Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: The U.S. Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

DATES: Written comments should be submitted by December 24, 2018.

ADDRESSES: You may submit comments identified by Docket No. DOT–NHTSA–2018–0091 through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lisandra Garay-Vega, Office of Crash Avoidance Standards (NRM–220), (202) 366–5274, National Highway Traffic Safety Administration, W43–312, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION:

Title: 49 CFR part 574, Tire Identification and Recordkeeping.

OMB Control Number: 2127–0050.

Type of Request: Extension of a currently approved collection of information.

Abstract: 49 U.S.C. 30117(b) requires each tire manufacturer to collect and maintain records of the first purchasers of new tires. To carry out this mandate, 49 CFR part 574, Tire Identification and Recordkeeping, requires tire dealers and distributors to record the names and addresses of retail purchasers of new tires and the identification numbers(s) of the tires sold. A specific form is provided to tire dealers and distributors by tire manufacturers for recording this information. The completed forms are returned to the tire manufacturers where they are retained for not less than five years. Part 574 requires independent tire dealers and distributors to provide a registration form to consumers with the tire identification number(s) already recorded and information identifying the dealer/distributor. The consumer can then record his/her name and address and return the form to the tire manufacturer via U.S. mail, or alternatively, the consumer can provide this information electronically on the tire manufacturer's website if the tire manufacturer provides this capability. Additionally, motor vehicle manufacturers are required to record the names and addresses of the first purchasers (for purposes other than resale), together with the identification numbers of the tires on the new vehicle, and retain this information for not less than five years.

The information is used by a tire manufacturer after it or the agency determines that some of its tires either fail to comply with an applicable safety standard or contain a safety related defect. With the information, the tire manufacturer can notify the first purchaser of the tire and provide them with any necessary information or instructions to remedy the non-compliance situation or safety defect. Without this information, efforts to identify the first purchaser of tires that have been determined to be defective or nonconforming pursuant to Sections 30118 and 30119 of Title 49 U.S.C. would be impeded. Further, the ability of the purchasers to take appropriate action in the interest of motor vehicle safety may be compromised. We estimate that the collection of information affects 10 million respondents annually. This group consists of approximately 20 tire manufacturers, 59,000 new tire dealers and distributors, and 10 million consumers who choose to register their tire purchases with tire manufacturers. A response is required by motor vehicle manufacturers upon each sale of a new vehicle and by non-independent tire dealers with the sale of a new tire. A consumer may elect to respond when purchasing a new tire from an independent tire dealer.

Affected Public: New tire dealers, new tire distributors, and consumers of new tires.

Estimated Number of Respondents: 10 million.

Frequency: once.

Number of Responses: 54,000,000.

Estimated Total Annual Burden Hours: 250,000.

The total tire registration hours are estimated assuming 45 seconds or 0.0125 hours per tire sale to record information and that each form registers three tires, on average. (0.0125 × (54,000,000/3) = 225,000 hours).

The estimated burden is as follows:

New tire dealers and distributors: 59,000.

Consumers: 10,000,000.

Total tire registrations (manual): 54,000,000.

Total tire registration hours (manual): 225,000.

Recordkeeping hours (manual): 25,000.

Total annual tire registration and recordkeeping hours: 250,000.

Estimated Total Annual Burden Cost: $6,085,000.

The monetized cost associated with the total burden hours, using a labor rate of $24.34 per hour,[1] is $6,085,000. ($24.34/hour × 250,000 hours = $6,085,000). It was previously calculated using a labor rate of $20 per hour. ($20.00/hour × 250,000 hours = $5,000,000). Therefore, the monetized cost associated with the total burden hours in this renewal application is $1,085,000 more than the previous estimate. ($6,085,000 − $5,000,000 = $1,085,000).

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

[1] The median hourly rate among all occupations, May 2017, according to the Bureau of Labor Statistics, see *https://www.bls.gov/oes/current/oes_nat.htm#00–0000*

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35; and delegation of authority at 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2018–23046 Filed 10–22–18; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request on Information Collection for Form 8886, Reportable Transaction Disclosure Statement; Form 14234, Pre-CAP and CAP Application Form

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8886, Reportable Transaction Disclosure Statement; Form 14234, Pre-CAP and CAP Application Form.

DATES: Written comments should be received on or before December 24, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to Alissa Berry, at (901) 707–4988, at Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Alissa.A.Berry@irs.gov*.

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Reportable Transaction Disclosure Statement; Pre-CAP and CAP Application Form.

OMB Number: 1545–1800.

Form Numbers: Form 8886 and Form 14234.

Abstract: Form 8886: Regulations section 1.6011–4 provides that certain taxpayers must disclose their direct or indirect participation in reportable transactions when they file their Federal income tax return. Pre-CAP and CAP Application Form (Form 14234): The Compliance Assurance Process (CAP) is a strictly voluntary program available to Large Business and International (LB&I) Division taxpayers that meet the selection criteria. CAP is a real-time review of completed business transactions during the CAP year with the goal of providing certainty of the tax return within 90 days of the filing. Taxpayers in CAP are required to be cooperative and transparent and report all material issues and items related to completed business transactions to the review team.

Current Actions: There are no changes to the information collection.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Taxpayer Burden:

Form 8886:

Estimated Number of Respondents: 42,409.

Estimated Time per Respondent: 21 hours 33 minutes.

Estimated Total Annual Burden Hours: 913,490.

Form 14234:

Estimated Number of Respondents: 169.

Estimated Time per Response: 12 hours 40 minutes.

Estimated Total Annual Burden Hours: 2,141.

Form	Number of responses	Hours per response	Total hours
Form 8886	42,409	21 Hours 33 minutes	913,490
Form 14234	169	12 Hours 40 minutes	2,141
Totals	42,578		915,631

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 18, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–23108 Filed 10–22–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request on Information Collection for Revenue Procedure 2015–13 (Previously Revenue Procedure 97–27)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Revenue Procedure 2015–13, Changes in Accounting Periods and in Methods of Accounting. Previously Revenue Procedure 97–27.

DATES: Written comments should be received on or before December 24, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to Alissa Berry, at (901) 707–4988, at Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Alissa.A.Berry@irs.gov.*

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Changes in Accounting Periods and in Methods of Accounting.

OMB Number: 1545–1541.

Revenue Procedure: 2015–13.

Abstract: The information contained in this revenue procedure provides the general procedures to obtain the advance (non-automatic) consent of the Commissioner to change a method of accounting and provides the procedures to obtain the automatic consent of the Commissioner to change a method of accounting.

Current Actions: There are no changes to the information collection or Total Estimated Annual Burden Hours. However, the Number of Respondents and Estimated Time per Respondent have been adjusted to correctly reflect the burden attributable to the procedural rules in Revenue Procedure 2011–14 and its earlier superseded revenue procedures that have been moved to Revenue Procedure 2015–13.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 11,758.

Estimated Time per Respondent: 1.58 hours.

Estimated Total Annual Burden Hours: 18,553.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 17, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–23122 Filed 10–22–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8882

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8882, Credit for Employer-Provided Child Care Facilities and Services.

DATES: Written comments should be received on or before December 24, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Charles G. Daniel at (202) 317 5754, at Internal Revenue Service, room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Charles.G.Daniel@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Credit for Employer-Provided Child Care Facilities and Services.

OMB Number: 1545–1809.

Form Number: 8882.

Abstract: Qualified employers use Form 8882 to request a credit for employer-provided child care facilities and services. Section 45F provides credit based on costs incurred by an employer in providing child care facilities and resource and referral services. The credit is 25% of the qualified child care expenditures plus 10% of the qualified child care resource and referral expenditures for the tax year, up to a maximum credit of $150,000 per tax year.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, and individuals.

Estimated Number of Responses: 286.

Estimated Time per Response: 3 hours, 41 minutes.

Estimated Total Annual Burden Hours: 1,053.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection

of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 17, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–23111 Filed 10–22–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee; Correction

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting; correction.

SUMMARY: In the **Federal Register** notice that was originally published on October 11, 2018, (Volume 83, Number 197, Page 51565) the Point of Contact information was changed from Gregory Giles, 240–613–6478 to (202) 317–3332, Otis Simpson. All meeting details remain the unchanged.

DATES: The meeting will be held Thursday, November 8, 2018.

FOR FURTHER INFORMATION CONTACT: Otis Simpson at 1–888–912–1227 or 202–317–3332.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Thursday, November 8, 2018, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Otis Simpson. For more information please contact Otis Simpson at 1–888–912–1227 or 202–317–3332, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

Dated: October 15, 2018.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2018–23030 Filed 10–22–18; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 83 Tuesday,
No. 205 October 23, 2018

Part II

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2510
Definition of ''Employer'' Under Section 3(5) of ERISA—Association Retirement Plans and Other Multiple-Employer Plans; Proposed Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2510

RIN 1210–AB88

Definition of ''Employer'' Under Section 3(5) of ERISA—Association Retirement Plans and Other Multiple-Employer Plans

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor proposes a regulation under title 29 of the Code of Federal Regulations to expand access to affordable quality retirement saving options by clarifying the circumstances under which an employer group or association or a professional employer organization (PEO) may sponsor a workplace retirement plan. In particular, the proposed regulation clarifies that employer groups or associations and PEOs can, when satisfying certain criteria, constitute ''employers'' within the meaning of section 3(5) of ERISA for purposes of establishing or maintaining an individual account ''employee pension benefit plan'' within the meaning of ERISA section 3(2). As an ''employer,'' a group or association can sponsor a defined contribution retirement plan for its members, as can a PEO sponsor a plan for client employers (collectively referred to as ''MEPs'' unless otherwise specified). The proposed regulation would allow different businesses to join a MEP, either through a group or association or through a PEO. The proposal would also permit certain working owners without employees to participate in a MEP sponsored by a group or association. The proposal would primarily affect groups or associations of employers, PEOs, plan participants, and plan beneficiaries. The proposal would not affect whether groups, associations, or PEOs assume joint-employment relationships with member-employers or client employers. But the proposal may affect banks, insurance companies, securities broker-dealers, record keepers, and other commercial enterprises that provide retirement-plan products and services.

DATES: Comments are due by December 24, 2018.

ADDRESSES: You may submit written comments, identified by RIN 1210–AB88, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210, Attention: Definition of Employer—MEPs RIN 1210–AB88.

Instructions: All submissions must include the agency name and Regulatory Identifier Number (RIN) for this rulemaking. If you submit comments electronically, do not submit paper copies. Comments will be available to the public, without charge, online at *http://www.regulations.gov* and *http://www.dol.gov/agencies/ebsa* and at the Public Disclosure Room, Employee Benefits Security Administration, Suite N–1513, 200 Constitution Ave., NW, Washington, DC, 20210.

Warning: Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records posted on the internet as received and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: Mara S. Blumenthal, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Overview and Purpose of Regulatory Action

Expanding access to workplace retirement plans is critical to helping more American workers financially prepare to retire. Approximately 38 million private-sector employees in the United States do not have access to a retirement plan through their employers.[1] According to the U.S. Bureau of Labor Statistics, 23 percent of all private-sector, full-time workers have no access to a workplace retirement plan.[2] The percentage of private-sector workers without access to a workplace retirement plan increases to 32 percent when part-time workers are included.[3]

Small businesses are less likely to offer retirement benefits. In 2018, approximately 85 percent of workers at private-sector establishments with 100 or more workers were offered a retirement plan. In contrast, only 53 percent of workers at private-sector establishments with fewer than 100 workers had access to such plans.[4] Contingent or temporary workers are less likely to have access to a workplace retirement plan than those who are traditionally employed.[5] Access to an employment-based retirement plan is critical to the financial security of aging workers. Among workers who do not have access to a workplace retirement plan, only about 13 percent regularly contribute to individual retirement accounts, commonly called IRAs.[6]

Regulatory complexity discourages employers—especially small businesses—from offering workplace retirement plans for their employees. Establishing and maintaining a plan is expensive for small businesses. A survey by the Pew Charitable Trusts found that only 53 percent of small-to mid-sized businesses offer a retirement plan; 37 percent of those not offering a plan cited cost as a reason.[7] Employers

[1] This number was estimated by the U.S. Department of Labor's Employee Benefits Security Administration using statistics from the U.S. Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in the United States, March 2018* (*www.bls.gov/ncs/ebs/benefits/2018/employee-benefits-in-the-united-states-march-2018.pdf*). According to Table 2 (entitled Retirement Benefits: Access, Participation and Take-up rates, Private Industry Workers) of this survey, approximately 68% of private-sector industry workers have access to retirement benefits through their employers in 2018. According to Appendix Table 2, the survey represents approximately 118.1 million workers in 2018. Thus, the number of private industry workers without access to retirement plans through their employers is estimated to be approximately 38 million ((100% − 68%) × 118.1 million).

[2] *U.S. Bureau of Labor Statistics, National Compensation Survey: Employee Benefits in the United States, March 2018 at Table 2 (entitled Retirement Benefits: Access, Participation and Take-up rates, Private Industry Workers). The survey is available at* (*www.bls.gov/ncs/ebs/benefits/2018/employee-benefits-in-the-united-states-march-2018.pdf*).

[3] *Id.*

[4] *Id.*

[5] *See* U.S. Bureau of Labor Statistics, *Contingent and Alternative Employment Arrangements—May 2017. See also* Copeland, *Employee Benefit Research Institute, Employment-Based Retirement Plan Participation: Geographic Differences and Trends, 2013,* (October 2014); U.S. Government Accountability Office, *Contingent Workforce: Size, Characteristics, Earnings, and Benefits,* April 20, 2015; U.S. Gov't Accountability Office, GAO–15–566, RETIREMENT SECURITY—*Federal Action Could Help State Efforts to Expand Private Sector Coverage* (Sept. 2015) (*www.gao.gov/assets/680/672419.pdf*).

[6] The Department calculated this using *Survey of Income and Program Participation 2008 Panel Data Waves 10 and 11.*

[7] The Pew Charitable Trusts, *Employer Barriers to and Motivations for Offering Retirement Benefits,* (June 2017) (*http://www.pewtrusts.org/-/media/assets/2017/09/employer_barriers_to_and_motivations.pdf*) (''Most commonly, employers without plans said that starting a retirement plan is too expensive to set up (37 percent). Another 22 percent cited a lack of administrative resources. In focus groups, some business representatives said their mix of workers—especially if they included low-wage or short-term employees—translated into limited employee interest in or demand for retirement benefits. But in the survey, only 17 percent cited lack of employee interest as the main reason they did not offer a plan.'').

often cite annual reporting costs and exposure to potential fiduciary liability as major impediments to plan sponsorship.[8]

MEPs thus have the potential to broaden the availability of workplace retirement plans, especially among small employers.[9] MEPs are a structure under which different businesses can adopt a single retirement plan. Pooling resources in this way can be an efficient way not only to reduce costs but also to encourage more plan formation. For example, investment companies often charge lower fund fees for plans with greater asset accumulations. And because MEPs facilitate the pooling of plan participants and assets in one large plan, rather than many small plans, they enable small businesses to give their employees access to the same low-cost funds as large employers offer.

For a small business, in particular, a MEP may present an attractive alternative to taking on the responsibilities of sponsoring or administering its own plan. The MEP structure can reduce the employer's cost of sponsoring a benefit plan and effectively transfer substantial legal risk to professional fiduciaries responsible for the management of the plan. Although employers would retain some fiduciary responsibility for choosing and monitoring the arrangement and forwarding required contributions to the MEP, the employer could keep more of its day-to-day focus on managing its business, rather than on its plan.

Under the proposal here, an employer generally would be required to execute a participation agreement or similar instrument that lays out the rights and obligations of the MEP sponsor and the participating employer before participating. But these employers would not be viewed as sponsoring their own separate, individual plans under ERISA. Rather, the MEP, if meeting the conditions of the proposal below, would constitute a single employee benefit plan for purposes of title I of ERISA. Consequently, the MEP sponsor —and not the participating employers—would generally be responsible, as plan administrator, for compliance with the requirements of title I of ERISA, including reporting, disclosure, and fiduciary obligations. This is so because the individual employers would not each have to act as plan administrators under ERISA section 3(16) or as named fiduciaries under section 402 of ERISA.

Under the Department's proposal, an employer group or association or PEO would be acting as the ''employer'' sponsoring the plan within the meaning of section 3(5) of ERISA. This means that, typically, the employer group or association or PEO would act as a plan administrator and named fiduciary and, thus, would assume most fiduciary responsibilities. A MEP under this proposal would be subject to all of the ERISA provisions applicable to defined contribution retirement plans, including the fiduciary responsibility and prohibited transaction provisions in title I of ERISA. As a plan that is maintained by more than one employer, the MEP would have to satisfy the requirements of section 210 (a) of ERISA.

B. The Need for Reform

Workers have limited tax-favored options to save for retirement beyond workplace plans. IRAs are not comparable to workplace retirement savings options. As compared to IRAs, the advantages to employees of ERISA-protected retirement plans include: (1) Higher contribution limits; (2) generally lower investment management fees as the size of plan assets increases; (3) a well-established uniform regulatory structure with important consumer protections, including fiduciary obligations, recordkeeping and disclosure requirements, legal accountability provisions, and spousal protections; (4) automatic enrollment; and (5) stronger protections from creditors. At the same time, workplace retirement plans provide employers with choice among plan features and the flexibility to tailor retirement plans that meet their business and employment needs.

Although many MEPs already exist, there are reasons why they are not more widely available. The Department knows from the ''association health plan'' rulemaking process (AHP Rule), for instance, that many employer groups and associations already exist and have an expressed interest in providing access to employee benefits to their members. We understand that several of these groups and associations view the Department's current interpretive position in subregulatory interpretive rulings, regarding the extent to which these entities may be considered ''employers'' to sponsor a benefit plan, as overly restrictive. Certain groups and associations may view the current position in subregulatory interpretive rulings as an undue impediment to greater sponsorship of retirement plans, in the same way that certain groups and associations viewed the Department's guidance for health plans prior to the AHP Rule. Likewise, we understand an active PEO industry already exists and that its members, much like employer groups and associations, offer or would like to offer MEPs to their clients. At least some PEOs may be discouraged from doing so by a lack of clear standards, to the detriment of employers, especially small employers.

Federal policy makers across the spectrum are increasingly focusing on the potential for MEPs to help America's workers. The Department is cognizant of Congress's efforts to promote MEPs through legislation.[10] The President, too, has declared it the policy of the Executive Branch to ''[e]xpand[ ] access to multiple employer plans . . . [as] an efficient way to reduce administrative costs of retirement plan establishment and maintenance and [to] encourage more plan formation and broader availability of workplace retirement plans, especially among small employers.'' [11]

[8] *See* U.S. Gov't Accountability Office, GAO–12–326, *Private Pensions Better Agency Coordination Could Help Small Employers Address Challenges to Plan Sponsorship* (March 2012) 18–19, *https://www.gao.gov/products/GAO-12-326.*

[9] Two other types of pension arrangements share features of MEPs, but are not the focus of this proposal. A ''multiemployer plan'' as defined in ERISA section 3(37) is a plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer. There are also Pre-approved Plans, which are plans that are made available by providers for adoption by employers. See Rev. Proc. 2017–41, 2017–29 IRB 92. A plan that uses a Pre-approved Plan document may either be a single-employer plan or a MEP. With respect to single-employer Pre-approved Plans, providers often offer services relating to central administration and may pool the assets of different plans into a central investment fund.

[10] In both the 114th and 115th Congress, a number of mostly bipartisan legislative proposals have been introduced encouraging the creation of MEPs. In the 115th Congress alone, the following eight bills have been introduced: H.R. 854, the ''Retirement Security for American Workers Act,'' sponsored by Rep. Vern Buchanan and five bipartisan cosponsors on Feb. 3, 2017, its Senate companion bill, S. 1383, the ''Retirement Security Act,'' sponsored by Sens. Susan Collins (R–ME) and Bill Nelson (D–FL) on June 6, 2017; .H.R. 4523, the ''Automatic Retirement Act of 2017,'' sponsored by Rep. Richard Neal (D–MA) on Dec. 8, 2017; H.R. 4637, the ''Small Businesses Add Value Act of 2017'' (SAVE Act), sponsored by Reps. Ron Kind (D–WI) and Dave Reichert (R–WA) on Dec. 13, 2017; S. 2526/H.R. 5282, the bipartisan bill, the ''Retirement Enhancement and Savings Act of 2018'' (RESA), sponsored, respectively by Senate Finance Committee Chairman Orrin Hatch (R–UT) and Ranking Member Ron Wyden (D–OR) on March 9, 2018, and Rep. Mike Kelly (R–PA) and 76 cosponsors (as of Sept. 19) on March 14, 2018; S. 3219, The ''Small Business Employees Retirement Enhancement Act, '' introduced by Sens. Tom Cotton (R–AR), Todd Young (R–IN), Heidi Heitkamp (D–ND), and Cory Booker (D–NJ) on July 17, 2018; and H.R. 6757, the ''Family Savings Act 2018,'' introduced on Sept. 10, 2018, by Rep. Rodney Davis (R–IL) and 29 cosponsors . H.R. 6757 was passed by the House of Representatives on Sept. 27, 2018, and referred to the Senate Finance Committee on Sept. 28, 2018, for consideration.

[11] Executive Order 13847 (83 FR 45321) (Sept. 6, 2018).

The Department's proposal differs in significant ways from several legislative proposals introduced in Congress. For one thing, the Department's proposal is more limited because it relies solely on the Department's authority to promulgate regulations administering title I of ERISA. Unlike the Department, Congress has authority to make statutory changes to ERISA and other areas of law that govern retirement savings, such as the Internal Revenue Code (Code).

The Department does, however, have authority to interpret the statutes it administers, and it believes that a regulation clarifying the meaning of the statutory term ''employer,'' 29 U.S.C. 1003(a)(1), will ensure that statutory term is a clear legal standard for the use of MEPs under title I of ERISA. The Department had previously issued subregulatory guidance interpreting this provision that took a narrow view of the circumstances under which a group or association of employers could band together to act ''in the interest of'' employer members in relation to the offering of retirement savings plans. By clarifying its interpretation of the statutory language, the Department believes it could improve access to employer-sponsored retirement savings plans in America.

The Department recently promulgated a similar rule to expand access to more affordable, quality healthcare by enhancing the ability of employers to band together to provide health benefits through a single ERISA-covered plan, called an ''association health plan'' (AHP). That regulation, the AHP Rule, issued on June 21, 2018, explains how employers acting together to provide such health benefits may meet the definition of the term ''employer'' in ERISA section 3(5).[12] The AHP Rule sets forth several criteria under which groups or associations of employers may establish an ERISA-covered multiple employer group health plan. Several commenters on the AHP proposed rule encouraged the Department to bring MEPs within the sweep of that rule or a new rule. In the AHP Rule, the Department said it would consider those comments in the retirement plan context.[13]

On August 31, 2018, President Trump issued Executive Order 13847, ''Strengthening Retirement Security in America,'' (Executive Order), which states that ''[i]t shall be the policy of the Federal Government to expand access to workplace retirement plans for American workers.'' The Executive Order directed the Secretary of Labor to examine policies that would: (1) Clarify and expand the circumstances under which U.S. employers, especially small and mid-sized businesses, may sponsor or adopt a MEP as a workplace retirement savings option for their employees, subject to appropriate safeguards; and (2) increase retirement security for part-time workers, sole proprietors, working owners, and other entrepreneurial workers with non-traditional employer-employee relationships by expanding their access to workplace retirement savings plans, including MEPs. The Executive Order further directed, to the extent consistent with applicable law and the policy of the Executive Order, that the Department consider within 180 days of the date of the Executive Order whether to issue a notice of proposed rulemaking, other guidance, or both, that would clarify when a group or association of employers or other appropriate business or organization could be an ''employer'' within the meaning of ERISA section 3(5).

The Department reviewed current policies regarding MEPs and concluded that it should clarify through regulation that an employer group or association or a PEO that meets certain conditions may sponsor a single MEP under title I of ERISA (as opposed to providing an arrangement that constitutes multiple retirement plans). The Department, therefore, is proposing to issue a regulation interpreting the term ''employer'' for purposes of ERISA section 3(5). This proposed rule would supersede subregulatory interpretive rulings under ERISA section 3(5), and it would establish more flexible standards and criteria for sponsorship of these MEPs than currently articulated in that prior guidance. This proposed rule is intended to facilitate the adoption and administration of MEPs and to expand access to workplace retirement plans. The Department especially seeks to expand such access for employees of small employers and for certain self-employed individuals. The Department's proposal would not impact existing auto-enrollment options and other features that make 401(k) plans attractive for employers.

As explained more fully in the regulatory impact analysis below, the Department also seeks to level the playing field for small-business employees by permitting them to have access to the lowest-cost funds, often reserved for employees in large-asset plans. Small differences in fund fees can translate into enormous differences in retirement savings over a career.[14] The GAO, for instance, has determined that ''participants in smaller plans typically pay higher fees than participants in larger plans.'' [15] GAO has emphasized the need for small businesses ''to understand plan fees in order to help participants secure adequate retirement savings.'' [16]

The Department acknowledges that the term ''multiple employer plan'' is used to refer to different kinds of employee-benefit arrangements. This proposal, however, addresses only two kinds of arrangements: Sponsorship of a MEP plan by either a group or association of employers or by a PEO. The proposed regulation sets forth the circumstances in which a group or association or a PEO is appropriately treated, within the meaning of ERISA section 3(5), as an ''employer'' in sponsoring an employee benefit plan for participating employers and their employees. The Department's proposal also would not involve defined benefit plans, in part, because the Department's view is that such plans raise different policy considerations. In addition, according to the Government Accountability Office, sponsorship of MEPs ''seems to be following the general trend away from traditional benefit plans and towards defined contribution plans.'' [17] Therefore, the proposed rule would apply solely to defined contribution plans.

The Department solicits public comment on whether the Department should address, by regulation or otherwise, whether there are other types of entities that should be treated as an ''employer,'' within the meaning of

[12] 83 FR 28912 (June 21, 2018).

[13] *Id.* at 28964, n.10 (The ''Department will consider comments submitted in connection with this rule as a part of its evaluation of MEP issues in the retirement plan and other welfare benefit plan contexts.'')

[14] Assume an employee with 35 years until retirement and a current 401(k) account balance of $25,000. If returns on investments over the next 35 years average 7 percent and fees and expenses reduce average returns on the account by 0.5 percent, the account balance will grow to $227,000 at retirement, even if there are no further contributions to the account. If fees and expenses are 1.5 percent, however, the account balance will grow to only $163,000. The 1 percent difference in fees and expenses would reduce the account balance at retirement by 28 percent. *https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/a-look-at-401k-plan-fees.pdf.*

[15] GAO–12–325, *Increased Educational Outreach and Broader Oversight May Help Reduce Plan Fees* (April 2012) at 21, *https://www.gao.gov/products/GAO-12-325.*

[16] GAO Testimony before the Senate Comm. on Health, Education, Labor and Pensions, Statement of Charles A. Jeszeck, GAO Director of Education, Workforce and Income Security, GAO–13–748T (July 16, 2013) at 16, *https://www.gao.gov/assets/660/655889.pdf.*

[17] GAO–18–111SP, *The Nation's Retirement System: A Comprehensive Re-evaluation Is Needed to Better Promote Future Retirement Security* (Oct. 2017); 2012 GAO report, at 10, *https://www.gao.gov/products/GAO-18-111SP.*

ERISA section 3(5), for purposes of sponsoring a MEP. *See* Section E, below, entitled ''Request for Public Comments.''

The Department also notes that nothing in the proposed rule is intended to suggest that participating in a MEP sponsored either by a bona fide group or association of employers or by a PEO gives rise to joint employer status under any federal or State law, rule, or regulation. The proposal also should not be read to indicate that a business that contracts with individuals as independent contractors becomes the employer of the independent contractor merely by participating in a MEP with those independent contractors, who would participate as working owners, if applicable, or promoting participation in a MEP to those independent contractors, as working owners. The Department asks for comment as to whether concerns about joint employment issues should be addressed further as part of any final rule.

C. Legal Background

1. Statutory Definitions

ERISA section 4 governs the reach of ERISA and, accordingly, of the Department's authority over benefit plans. ERISA applies not to every benefit plan but only to an ''employee benefit plan'' sponsored ''by any employer.'' ERISA section 4(a)(1); 29 U.S.C. 1003(a)(1). The provision reads in relevant part: ERISA ''shall apply to any employee benefit plan if it is established or maintained by any employer.'' [18] ERISA defines ''employee pension benefit plan'' to include ''any plan, fund, or program . . . established or maintained by an employer . . . to the extent that by its express terms or as a result of surrounding circumstances'' it provides retirement income to employees or the deferral of such income. The term ''employer'' is again essential to recognizing an ''employee pension benefit plan'' within the meaning of ERISA. Thus, a prerequisite of ERISA coverage is that the retirement plan must be established or maintained by an ''employer.''

ERISA section 3(5) defines the term ''employer.'' ERISA section 3(5); 29 U.S.C. 1002(5). ERISA's definitional provision reads in full:

The term 'employer' means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

When Congress enacted ERISA in 1974, it copied this important definition from the 1958 Welfare and Pension Plans Disclosure Act. Public Law 85–836, sec. 3(a)(4), 72 Stat. 997, 998 (1958).

But ERISA does not explain what it means for an entity to act ''directly as an employer'' or ''indirectly in the interest of an employer, in relation to an employee benefit plan.'' Nor does the statute explain what is meant by a ''group or association of employers.'' In short, these ambiguous statutory terms are not themselves defined. As one court has recognized, the ''problem lies, obviously enough, in determining what is meant by these oblique definitions of employer.'' *Meredith* v. *Time Ins. Co.,* 980 F.2d 352, 356 (5th Cir. 1993). The statutory lacunae have proven problematic for some courts. They ''have found the phrase 'act . . . indirectly in the interest of an employer' difficult to interpret.'' *Mass. Laborers' Health & Welfare Fund* v. *Starrett Paving Corp.,* 845 F.2d 23, 24 (1st Cir. 1988); *accord Greenblatt* v. *Delta Plumbing & Heating Corp.,* 68 F.3d 561, 575 (2d Cir. 1995). So too is there statutory ambiguity with the term ''group or association of employers.'' Because ERISA ''does not define th[at] term,'' this ''void injects ambiguity into the statute.'' *MD Physicians & Assocs.* v. *State Bd. of Ind.,* 957 F.2d 178, 184 (5th Cir. 1992). Although ERISA contains a definition of ''employer,'' the important terms used within that definition are unexplained.

In light of all this, and consistent with longstanding principles of administrative law, the Department is best-positioned to address this statutory ambiguity by exercising its discretion to explicate some of the terms used in section 3(5). In doing so, the Department is aided both by the common understanding of the broad terms used in ERISA section 3(5) and by the statutory context.

2. Bona Fide Groups or Associations

The Department has long taken the position that, even in the absence of the involvement of an employee organization, a single ''multiple employer plan'' under ERISA may exist where a cognizable group or association of employers, acting in the interest of its employer members, establishes a benefit program for the employees of member employers. To satisfy these criteria, the group or association must exercise control over the amendment process, plan termination, and other similar functions of the plan on behalf of the participating-employer members with respect to the plan and any trust established under the program.[19] DOL guidance generally refers to these entities—*i.e.,* entities that qualify as groups or association, within the meaning of section 3(5)—as ''bona fide'' employer groups or associations.[20] For each employer that adopts for its employees a program of pension or welfare benefits sponsored by an employer group or association that is not ''bona fide,'' such employer establishes its own separate employee benefit plan covered by ERISA.[21] Largely, but not exclusively, in the context of welfare-benefit plans, the Department has previously distinguished employer groups or associations that can act as an ERISA section 3(5) employer in sponsoring a multiple employer plan from those that cannot. To do so, the Department has asked whether the group or association has a sufficiently close economic or representational nexus to the employers and employees that participate in the welfare plan that is unrelated to the provision of benefits.[22]

DOL advisory opinions and court decisions have long applied a facts-and-circumstances approach to determine whether there is a sufficient common economic or representational interest or genuine organizational relationship for there to be a bona fide employer group or association capable of sponsoring an ERISA plan on behalf of its employer members. This analysis has focused on three broad sets of issues, in particular: (1) Whether the group or association is a bona fide organization with business/organizational purposes and functions unrelated to the provision of benefits; (2) whether the employers share some commonality and genuine organizational relationship unrelated to the provision of benefits; and (3) whether the employers that participate in a plan, either directly or indirectly, exercise control over the plan, both in form and substance. This approach has ensured that the Department's regulation of employee benefit plans is focused on employment-based arrangements, as contemplated by ERISA's text. This approach also helps distinguish the establishment by a group or association of an employee benefit plan from ''commercial insurance,''

[18] ERISA also covers benefit plans established or maintained by employee organizations and such plains operated by both employers and employee organizations.

[19] *See* 83 FR at 28912, 28920.

[20] *See, e.g.,* Advisory Opinions 2008–07A, 2003–17A, and 2001–04A.

[21] *See* 83 FR 28912, 13 (citing Advisory Opinion 96–25A).

[22] *See* 83 FR 28912; *see also* Advisory Opinions 2012–04A, 1983–21A, 1983–15A, and 1981–44A.

consonant with ERISA's structure.[23] The Department continues to believe that this approach provides for a sound reading of ERISA and that it represents a sound policy choice. Concerns for simplicity and uniformity in approach justify applying the same requirement to an entity acting as ''a group or association'' in the pension context.

3. Professional Employer Organizations

According to the IRS, the term ''PEO'' generally refers to an organization that ''. . . enters into an agreement with a client to perform some or all of the federal employment tax withholding, reporting, and payment functions related to workers performing services for the client.'' [24] The provisions of a PEO arrangement typically state that the PEO assumes certain employment responsibilities that the client-employer would otherwise fulfill with respect to employees. Under the terms of a typical PEO contract, the PEO assumes responsibility for paying the employees and for related employment tax compliance, with attending contractual responsibilities and obligations without regard to payment from the client employer to the PEO. A PEO also may manage human resources, employee benefits, workers-compensation claims, and unemployment-insurance claims for the client employer. The client employer typically pays the PEO a fee based on payroll costs plus an additional amount.[25] According to a representative of the PEO industry, ''[f]or the obligations a PEO agrees to take on with respect to its clients, the PEO assumes specific employer rights, responsibilities, and risks through the establishment and maintenance of a relationship with the workers of the client[,]'' including in some cases to ''reserve a right of direction and control of the employees with respect to particular matters.'' [26] Within the array of PEO-provided services and functions, nearly all PEOs offer some type of retirement plan to their client employers.[27]

(a) Current Primary Legal Authority

Although many PEOs administer plans for their client employers today, there is little direct authority on precisely what it means for a PEO or other entity to act ''indirectly in the interest'' of its client employers in relation to an employee benefit plan for purposes of ERISA section 3(5). But whether a PEO is an ''employer'' under section 3(5) depends on the ''indirectly in the interest of an employer'' provision, not the ''employer group or association'' provision. And neither existing subregulatory guidance nor judicial authority has articulated a specific test to determine when a PEO is sufficiently tied to its client-employer to be said to be acting ''indirectly in the interest of an employer, in relation to an employee benefit plan,'' within the meaning of section 3(5).[28] The different statutory text and differences in the nature of the employer relationships merit a different regulatory approach to PEOs than to employer groups or associations.

The IRS, for example, has already recognized that a PEO may offer a MEP for its clients under the Code. The Code sets forth rules for a plan maintained by more than one employer. Specifically, Code section 413(c) addresses the tax-qualified status of certain pension ''plans'' that cover the employees of multiple employers.[29] Under § 1.413–2(a)(2), a plan is subject to the requirements of section 413(c) if it is a single plan within the meaning of § 1.413–1(a)(2) [30] and the plan is maintained by more than one employer.

Pursuant to section 413(c) and the regulations thereunder, for purposes of certain qualification requirements, all employees of each of the employers maintaining a MEP (participating employers) are treated as being employed by a single employer.[31]

Under section 413 of the Code, other qualification rules are applied separately to each participating employer. For example, under § 1.413–2(a)(3)(ii) of the Income Tax Regulations, the minimum coverage requirements of Code section 410(b) and related nondiscrimination requirements are generally applied to a MEP on an employer-by-employer basis.

(b) Current Secondary Legal Authority

Some federal statutes treat a PEO as an ''employer'' for limited purposes in other circumstances. For instance, regulations issued pursuant to the Family and Medical Leave Act of 1993 (FMLA) specifically recognize that a PEO may, under certain circumstances, enter into a relationship with the employees of its client companies such that it is considered a ''joint employer'' for purposes of determining FMLA coverage and eligibility, enforcing the FMLA's anti-retaliation provisions, and in limited situations, providing job restoration.[32] In the main, however, the FMLA regulations clarify that a ''PEO does not enter into a joint employment relationship with the employees of its client companies when it merely performs . . . administrative functions,'' such as ''payroll benefits, regulatory paperwork, and updating employment policies.'' 29 CFR 825.106(b)(2). The regulation makes clear that PEOs do not become joint employers simply by virtue of providing such services to client-employers.

In addition, Code section 3401(d) defines the term ''employer,'' for purposes of income tax withholding, this way: ''the person for whom an individual performs or performed any service . . . as the employee of such person except that if the person for

[23] 83 FR 28914, 28917.

[24] Certified Professional Employer Organizations, 81 FR 27315–01 (May 6, 2016).

[25] Foster, Michael D., *Certified Professional Employer Organizations* (July 7, 2016) *https://www.jacksonkelly.com/tax-monitor-blog/certified-professional-employer-organizations.*

[26] National Association of Professional Employer Organizations (*https://www.napeo.org/what-is-a-peo/about-the-peo-industry/what-is-co-employment*).

[27] *See, e.g.,* Bassi, Laurie, *Professional Employer Organizations: Fueling Small business Growth,* (Sept. 2013), at 2–3 (*https://www.napeo.org/docs/default-source/white-papers/whitepaper1.pdf?sfvrsn=2*).

[28] The lack of a specific and clear test leads to different outcomes. *Compare Yearous* v. *Pacificare of California,* 554 F. Supp. 2d 1132 (S.D. Cal. 2007) (applying factors in *Nationwide Mut. Ins. Co.* v. *Darden,* 503 U.S. 318 (1992), court concluded that PEO is direct employer of owner of company for purposes of sponsoring an ERISA covered healthcare plan covering the owner and his beneficiaries) *with Texas* v. *Alliance Employee Leasing Co.,* 797 F. Supp. 542 (N.D. Tex. 1992) (finding leasing company did not act directly or indirectly as employer under ERISA).

[29] Several of the rules applicable to plans under section 413(c) of the Code are parallel to the rules for plans maintained by more than one employer under section 210 of ERISA. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over ERISA section 210.

[30] Section 1.413–1(a)(2) applies the definition of a single plan in § 1.414(l)–1(b), providing that a plan is a single plan if and only if, on an ongoing basis, all of the plan assets are available to pay benefits to employees who are covered by the plan and their beneficiaries.

[31] For example, under section 413(c)(1) of the Code and § 1.413–2(b) of the Income Tax Regulations, Code section 410(a) (participation) and the regulations thereunder are applied as if all employees of each of the employers who maintain the plan are employed by a single employer. In addition, under section 413(c)(2) of the Code and § 1.413–2(c) of the Income Tax Regulations, in determining whether a MEP is, with respect to each participating employer, for the exclusive benefit of its employees (and their beneficiaries), all of the employees participating in the plan are treated as employees of each such employer. See IRS Rev. Proc. 2002–21 (providing ''a framework under which plans sponsored by PEOs will not be treated as violating the exclusive benefit rule solely because they provide benefits to Worksite Employees.''). Finally, under section 413(c)(3) of the Code and § 1.413–2(d) of the Income Tax regulations, Code section 411 (minimum vesting standards) and the regulations thereunder are generally applied as if all employers who maintain the plan constituted a single employer.

[32] 29 CFR 825.106(b)(2), (e).

whom the individual performs or performed the services does not have control of the payment of the wages for such services, [then] the term 'employer' . . . means the person having control of the payment of such wages.'' [33]

An entity meeting these requirements is referred to as the ''statutory employer.'' Although generally PEOs do not have exclusive control of the payment of wages within the meaning of the applicable regulations requiring ''legal control'', in some cases, a PEO has been found to be the employer under Code § 3401(d)(1) under the facts of the case.[34]

Furthermore, the Tax Increase Prevention Act of 2014, Public Law 113–295 (Dec. 19, 2014) required the IRS to establish a voluntary certification program for such PEOs (CPEO Program) as discussed in more detail below.

The CPEO Program recognizes PEOs that meet certain requirements within the Code and provides a level of assurance to small-business owners that rely on a CPEO to handle their employment-tax issues. CPEOs are treated as employers under the Code for employment tax purposes with regard to remuneration paid to their customers' employees under CPEO service contracts. A CPEO is solely liable for the employment tax withholding, payment, and reporting obligations with respect to remuneration it pays to work site employees (as defined in IRC 7705(e)).'' [35]

D. Overview of Proposed Regulation

1. General

The Department believes that providing additional opportunities for employers to join MEPs as a way to offer workplace retirement savings plans to their employees could, under the conditions proposed here, offer many small businesses more affordable and less burdensome retirement savings plan alternatives than are currently available. The Department expects that the proposal, if finalized, would prompt some small businesses that do not currently offer workplace retirement benefits to offer such benefits. The proposal could increase the number of employees enrolled in workplace retirement plans, thereby offering America's workers better retirement savings opportunities and greater retirement security.

Paragraph (a) of the proposal defines the scope of the rulemaking. This paragraph provides that bona fide employer groups or associations and bona fide PEOs may act as an ''employer'' under ERISA section 3(5) for purposes of sponsoring a MEP. In each case, this interpretation is based upon the Department's conclusion that such bona fide employer groups, associations, or PEOs act ''in the interest of'' their employer members in relation to a retirement savings plan. Paragraph (a) would limit this rulemaking to defined contribution plans, as defined in ERISA section 3(34); the proposal thus does not cover welfare plans or other types of pension plans. The proposal is limited in this manner because the Department believes that consideration and development of any proposal covering other types of pension and welfare plans or other persons or organizations as plan sponsors would benefit from public comments and additional consideration by the Department.

2. Bona Fide Employer Groups or Associations

Paragraph (b) of the proposal would define and clarify the criteria for a ''bona fide'' group or association of employers capable of establishing a MEP.[36] This paragraph would replace and supersede criteria in prior subregulatory guidance. The proposed criteria are intended to distinguish bona fide group or association MEPs from products and services offered by purely commercial pension administrators, managers, and record keepers. These commercial enterprises are outside the scope of the rule as proposed.[37]

Specifically, paragraph (b)(1) of the proposal contains seven criteria for determining whether a group or association of employers is a ''bona fide'' group or association of employers for purposes of ERISA section 3(5) and the regulation. With one exception, these criteria parallel those used in the AHP Rule and are intended to have the same meaning and effect here, as they have there. Four of the criteria provide that the group or association must have a formal organizational structure, be controlled by its employer members, have at least one substantial business purpose unrelated to offering and providing employee benefits to its employer members, and limit plan participation to employees and former employees of employer members.[38] Two other criteria provide that employer members must have a commonality of interest and that each employer must act directly as an employer of at least one employee participating in the MEP. The intent of including these criteria in paragraph (b) is to distinguish between groups and associations that act as employers within the meaning of ERISA section 3(5), from other entities that do not act as an ''employer.'' As explained in the AHP Rule, ERISA section 3(5) of ERISA and ERISA Title I's overall structure contemplate employment-based benefit arrangements.[39] Moreover, the Department's authority to define ''employer'' and ''group or association of employers'' under ERISA section 3(5) does not broadly extend to arrangements established to provide benefits outside the employment context and without regard to the members' status as employers.[40]

The AHP Rule, in relevant part, prohibits health-insurance companies from being treated as a bona fide group or association. A construction of ''employer'' encompassing insurance companies that are merely selling commercial insurance products and services to employers would effectively read the definition's employment-based limitation out of the statute. In a broad colloquial sense, it is possible to say that commercial service providers, such as banks, trust companies, insurance companies, and brokers, act ''indirectly in the interest of'' their customers, but that does not convert every service provider into an ERISA-covered ''employer'' of their customer's employees. Accordingly, the Department required that the individual employer members of the group or association must control the AHP, and the Department declined to construe ''employer'' in a manner that would permit commercial insurers to market insurance products and services as AHP sponsors.

[33] In *Otte* v. *United States,* 419 U.S. 43 (1974), the Supreme Court held that a person who is an employer under section 3401(d)(1), relating to income tax withholding, is also an employer for purposes of withholding the employee share of Federal Insurance Contributions Act (FICA) under section 3102. The *Otte* decision has been extended to provide that the person having control of the payment of the wages is also an employer for purposes of section 3111, which imposes the FICA tax on employers, and section 3301 (Federal Unemployment Tax Act (FUTA) tax). See *In re Armadillo Corp.,* 410 F. Supp. 407 (D. Colo. 1976), affd, 561 F.2d 1382 (10th Cir. 1977); *In re The Laub Baking Co.,* 642 F.2d 196, 199 (6th Cir.1981).

[34] *United States* v. *Total Employment Co. Inc., 305 B.R. 333 (M.D. Fla. 2004).*

[35] See IRC section 3511(a)(1).

[36] The term ''bona fide'' in the proposal refers to a group, association, or PEO that meets the conditions of the proposed regulation and, therefore, is able to be an ''employer'' for purposes of section 3(5) of ERISA. No inferences should be drawn from the use of this term regarding the actual bona fides of the group, association or organization outside of this context.

[37] *See* Section E, Request for Public Comments.

[38] A bona fide group or association may sponsor both an AHP and a MEP, but the group or association would have to have at least one substantial business purpose other than offering employee benefit plans.

[39] 83 FR 28912, 28913 (June 21, 2018).

[40] *Id.* at 28916.

The Department believes that applying a similar understanding of ''group or association'' of employers in the pension context as in the AHP context promotes simplicity and uniformity in regulatory structure. The Department therefore applies a similar approach to employer groups or associations sponsoring MEPs. Accordingly, paragraph (b)(vii) of the proposal would prohibit an employer group or association from being a bank, trust company, insurance issuer, broker-dealer, or other similar financial-services firm (including pension record keepers and third-party administrators) and from being owned or controlled by such a financial-services firm.

The proposed rule does not contain provisions analogous to the healthcare nondiscrimination provisions of the AHP Rule because defined contribution retirement plans do not underwrite health risk and are not susceptible to the rating and segmentation pressures that characterize the healthcare marketplaces. Some defined contribution plans may offer lifetime income features, such as immediate or deferred annuities, which potentially implicate some degree of longevity risk. The Department, however, does not believe the presence of longevity risk in ancillary features of defined contribution MEPs warrants nondiscrimination provisions analogous to those of the AHP Rule. The Department also believes that any relevant nondiscrimination concerns are already addressed in the tax-qualification provisions of the Code or other federal laws. The Department solicits comments on this issue.

Paragraph (b)(2) of the proposal sets forth standards for determining whether employers have sufficient commonality of interests for purposes of the commonality requirement in paragraph (b)(1). Specifically, this paragraph would allow employers to band together for the express purpose of offering MEP coverage if the employers are in the same trade, industry, line of business, or profession; or if the employers have a principal place of business within a region that does not exceed the boundaries of the same state or the same metropolitan area (even if the metropolitan area includes more than one state). Determinations of what is a ''trade,'' ''industry,'' ''line of business,'' or ''profession,'' as well as whether an employer fits into one or more of these categories, are based on all relevant facts and circumstances; the Department intends for these terms to be construed broadly to expand employer and employee access to MEP coverage.

3. Professional Employer Organizations

Paragraph (c) of the proposal would establish four criteria that must be met for a PEO to qualify as a ''bona fide'' PEO that may act ''indirectly in the interest of [its client] employers'' and, consequently, as an ''employer'' under ERISA section 3(5) for purposes of sponsoring a MEP covering the employees of client employers. Specifically, paragraph (c)(1)(i) of the proposal would require the PEO to perform substantial employment functions on behalf of the client employers. Paragraph (c)(1)(ii) would require the PEO to have substantial control over the functions and activities of the MEP, and assume certain statutory roles under ERISA. As further explained below, looking to substantial control is sensible given the language of section 3(5) of ERISA. Paragraph (c)(1)(iii) would require the PEO to ensure that each client-employer participating in the MEP has at least one employee who is a participant covered under the MEP. Paragraph (c)(1)(iv) of the proposal would provide that the PEO must ensure that participation in the MEP is limited to current and former employees of the PEO and of client-employers, as well as their beneficiaries.

A PEO's assumption and performance of substantial employment functions on behalf of its client-employers is one of the lynchpins of the proposal. Just as commonality and control establish the nexus for groups or associations of employers under paragraph (b) of the proposal, the PEO's assumption and performance of employment functions for its client employers contributes significantly to the establishment of the requisite nexus for PEOs. Requiring the PEO to stand in the shoes of the participating client employers—by assuming and performing substantial employment functions that the client-employers otherwise would fulfill with respect to their employees—is what distinguishes bona fide PEOs under the proposal from service providers or other entrepreneurial ventures that in substance merely market or offer client-employers access to retirement plan services and products. This requirement applies a clear limiting principle to entities that can be said to be acting ''indirectly in the interest of'' another employer within the meaning of ERISA section 3(5).

A PEO's status under this proposal and whether a PEO performs substantial employment functions as described herein, however, is not tantamount to the PEO's assumption or creation of an employment relationship (whether referred to as joint employment or otherwise) with the client-employer, for purposes of other laws or liabilities. The question of joint employment for purposes of other laws and liabilities is an independent inquiry wholly unaffected by a PEO's potential status as an ''employer'' within the meaning of ERISA section 3(5). Whether a PEO qualifies as an ERISA section 3(5) ''employer'' under the ''indirectly'' provision has no effect on the rights or responsibilities of any party under any other law, including the Code, and neither supports nor prohibits a finding of an employment relationship.

A second important limiting principle in construing section 3(5)'s ''indirectly in the interest of'' clause is that the PEO must have substantial control of the functions and activities of the employee benefit plan at issue. This construction comports with the definition's reference to a person acting as the employer ''in relation to the plan.'' Consequently, paragraph (c)(1)(ii) of the proposal would require the PEO to have substantial control over the functions and activities of the MEP, as the plan sponsor (within the meaning of section 3(16)(B) of the Act), the plan administrator (within the meaning of section 3(16)(A) of the Act), and a named fiduciary (within the meaning of section 402 of the Act).

To provide guidance on what is meant by performing ''substantial employment functions'' under the proposal, paragraph (c)(2)(ii) of the proposed rule provides a disjunctive list of nine relevant criteria, even one of which may be sufficient to establish substantiality depending on the particular facts and circumstances and the particular criterion. This list was drawn from the types of services and functions PEOs routinely offer their clients, and with reference to the CPEO statutory and regulatory provisions.

The list of ''substantial employment functions'' in paragraph (c)(2)(ii) of the proposal would look to whether, with respect to client-employer employees participating in the PEO's plan, the organization is responsible for:

- Payment of wages to the employees without regard to the receipt or adequacy of payment from its client employers;
- Reporting, withholding, and paying any applicable federal employment taxes, without regard to the receipt or adequacy of payment from its client employers;
- Recruiting, hiring, and firing workers in addition to the client-employer's responsibility for recruiting, hiring, and firing workers;
- Establishing employment policies, conditions of employment, and

supervising employees in addition to the client-employer's responsibility to perform these same functions;

- Determining employee compensation, including method and amount, in addition to the client-employer's responsibility to determine employee compensation;
- Providing workers' compensation coverage in satisfaction of applicable State law, without regard to the receipt or adequacy of payment from its client employers;
- Integral human-resource functions, such as job description development, background screening, drug testing, employee-handbook preparation, performance review, paid time-off tracking, employee grievances, or exit interviews, in addition to the client employer's responsibility to perform these same functions;
- Regulatory compliance in the areas of workplace discrimination, family and medical leave, citizenship or immigration status, workplace safety and health, or permanent labor-certification program, in addition to the client employer's responsibility for regulatory compliance; or
- The organization continues to have employee benefit plan obligations to MEP participants after the client employer no longer contracts with the organization.

The proposal provides that, depending on the facts and circumstances of the particular situation, even one of these criteria alone may be sufficient to satisfy the requirement that a PEO perform substantial employment functions on behalf of its client employers. Just as a way of illustrating the Department's intent with respect to the provision, with respect to the PEO's responsibility to supervise employees of client employers (as contemplated under the criterion in paragraph (c)(2)(ii)(D) of the proposal), the Department would likely consider a PEO to meet the substantiality requirement if, for example, the PEO controlled the manner and means by which employees accomplished their assigned chores or completed their assignments, without regard to the extent or degree to which the PEO satisfied the other eight criteria. On the other hand, the Department likely would not reach the same conclusion if the only function performed by the PEO, for example, is that it performs drug testing on behalf of its client-employers, even if the PEO assumes complete responsibility for that task.

Although this approach offers PEOs the flexibility of a facts-and-circumstances approach, the Department also understands that some entities may prefer more regulatory certainty in ordering their business affairs. For this reason, the proposal contains two regulatory safe harbors separate from the facts-and-circumstances test described above.

The first safe harbor provides that a PEO will be considered to perform substantial employment functions on behalf of its client-employers if it is a ''certified professional employer organization'' (CPEO) within the meaning of Code section 7705 and regulations thereunder, has a ''service contract'' within the meaning of Code section 7705(e)(2) with the client employers who adopt the MEP with respect to the client-employer employees participating in the MEP, satisfies the criteria in paragraphs (c)(2)(ii)(A)–(C) of the proposal, and also meets at least two criteria listed in paragraph (c)(2)(ii)(D) through (I) of the proposal. Generally a CPEO is a PEO that has applied for certification and has been certified by the Internal Revenue Service (IRS) as meeting the requirements of Code section 7705(b). To become and remain a CPEO, a PEO must demonstrate (and continue to demonstrate) to the IRS that it meets specified requirements relating to tax status, background, experience, business location, and annual financial audits. Among other requirements, to become and remain a CPEO, the PEO must also agree to satisfy certain bond, financial review, and reporting requirements.[41] The IRS has the authority to suspend and revoke the certification of any CPEO if it determines that the CPEO is not satisfying the requirements of Code sections 7705(b) or (c) or fails to satisfy applicable accounting, reporting, payment, or deposit requirements. These attributes are also relevant to employers' consideration of PEOs when evaluating retirement options because they may reduce the potential for fraud, abuse, and mismanagement with respect to employment functions.

The second safe harbor is for PEOs that do not satisfy the CPEO safe harbor but meet five or more criteria from the list in paragraph (c)(2)(ii) of the proposal. The Department understands that the CPEO Program is voluntary; therefore, not all PEOs are (or remain) CPEOs. The Department does not believe that the absence of CPEO status necessarily should disqualify a PEO from acting as an employer in sponsoring a MEP. This safe harbor thus applies when covered PEOs meet at least half of the relevant criteria, with the choice as to the five particular criteria left to the discretion of the PEO based on its business structure and operations. Although any single criterion alone may, depending on the facts and circumstances and particular criterion, be sufficient to satisfy the requirement that a PEO perform substantial employment functions on behalf of its client employers, as a safe harbor, the Department is of the view that meeting at least half of the listed criteria demonstrates convincingly that the PEO is performing substantial employment functions and ensures that PEOs using this safe harbor provision will fall well within the definition in section 3(5). The same standard of five criteria also effectively applies to the CPEO safe harbor in paragraph (c)(2)(i) of the proposal because CPEOs entering into CPEO service-contracts within the meaning of section 7705(e)(2) with client-employers who adopt the MEP must both assume and perform employment functions on behalf of client-employers under the relevant criteria set forth in paragraph (c)(2)(ii)(A)–(C) of the proposed regulation with respect to the client-employer employees participating in the MEP, and would still need to satisfy two more criteria to fall within the CPEO safe harbor.

4. Dual Treatment of Working Owners as Employers and Employees

Like the AHP Rule,[42] paragraph (d) of this proposed rule would expressly provide that working owners, such as sole proprietors and other self-employed individuals, may elect to act as employers for purposes of participating in a bona fide employer group or association as described in (b)(1) of the proposed regulation and also be treated as employees of their businesses for purposes of being able to participate in the MEP.

To qualify as a working owner, a person would be required to work at least 20 hours per week or 80 hours per month, on average, or have wages or self-employment income above a certain level. Specifically, the working owner's wages or self-employment income must equal or exceed the working owner's cost of coverage to participate in the group or association's health plan, if the group or association has such a plan. In other words, if the working owner makes enough money to be considered both an employer and employee under the AHP Rule, the working owner may also be considered both an employer

[41] IRC section 7705(b) and (c); 26 CFR 301.7705–2T—CPEO Certification Requirements.

[42] 83 FR at 28964.

and employee under this proposal.[43] The Department adopts this threshold because, unlike healthcare coverage, participation in a MEP does not have a specific dollar amount associated with the benefits; thus, there is no minimum cost of participation.[44]

The proposed rule would not extend this definition to MEPs sponsored by PEOs under paragraph (c) of the proposal. Thus, a working owner's trade or business would have to have at least one common law employee to participate in a PEO's MEP under paragraph (c) of the proposed regulation. The Department understands that working owners without employees generally would not have need for the employment services of PEOs, such as payroll, compliance with federal and state workplace laws, and human-resources support. Thus, a trade or business without employees would not seem to have a genuine need for a relationship with a PEO. Accordingly, the working-owner provision would only apply for purposes of participation in MEPs sponsored by a bona fide group or association. The Department understands, however, that there may be circumstances in which a working owner without common law employees has a genuine need to be in a PEO's MEP. For example, if the working owner has had common law employees and used a PEO, including joining the PEO's MEP, but was later unable to afford to continue to employ others and did not want to stop participating in the PEO plan. Accordingly, the Department solicits comments on the circumstances, if any, under which working owners without employees should be able to participate in a multiple employer plan through a PEO under title I of ERISA.

E. Request for Public Comments

The proposed regulation addresses when a group or association of employers or PEO falls within the definition of ''employer'' under ERISA section 3(5) for purposes of sponsoring a MEP under title I of ERISA to cover the employees of member employers. The Department invites comments on all aspects of this proposal, including its scope, as well any data, studies or other information that would help refine and improve the proposal's estimated costs, benefits, and transfers.

The Executive Order called on the Department to consider more generally whether businesses or organizations other than groups or associations of employers and PEOs should be able to sponsor a single MEP under title I of ERISA by acting indirectly in the interest of participating employers in relation to the plan within the meaning of ERISA section 3(5). The Department is aware of at least two other types or categories of MEPs not specifically addressed in the proposed rule.[45] While both of these categories are outside the scope of the rule as proposed, the Department specifically solicits public comments on whether the Department should address one or more of these other categories of MEPs, by regulation or otherwise.

The first category includes so-called ''corporate MEPs,'' which are plans that cover employees of related employers which are not in the same controlled group or affiliated service group, within the meaning of section 414(b), (c), and (m) of the Code. While corporate MEPs are not directly addressed in this guidance, the Department does not intend to convey that a corporate MEP could not be a single employee benefit plan under title I of ERISA. Rather, comments specifically are requested on whether any regulatory provisions or other guidance is needed to address the MEP status of plans maintained by such related employers.

The second category consists of ''open MEPs,'' which are plans that cover employees of employers with no relationship other than their joint participation in the MEP. As mentioned earlier in this preamble, many recent legislative proposals center on these later arrangements, which are often referred to as ''pooled employer plans.'' Comments specifically are requested on whether, and under what circumstances, so-called ''open MEPs'' or ''pooled employer plans,'' as depicted in the various legislative proposals, could be operated as an employment-based arrangement, as contemplated by ERISA's text. To the extent commenters believe that these arrangements should be addressed in this or a future rulemaking, the Department asks that the comments include a discussion of why such an arrangement should be treated as one employee benefit plan within the meaning of title I of ERISA rather than as a collection of separate employer plans being serviced by a commercial enterprise that provides retirement plan products and services. Such commenters also should provide suggestions regarding the regulatory conditions that should apply to the particular arrangement.

The Department solicits comments on whether including working owners in the current proposal could affect the utility of 401(k) plans for working owners, who may prefer those plans because of their ERISA-exempt status (or other reasons). Under current law, working owners without employees can sponsor 401(k) plans, often called solo-401(k) plans. Under the Code, these plans, like other 401(k) plans, are subject to rules concerning eligibility, contributions, taxes, and distributions. Solo 401(k) plans, however, have historically been outside the coverage of title 1 of ERISA. 29 CFR 2510.3–3. The Department's proposal would permit working owners to participate in ERISA-covered MEPs without altering its position that a ''plan under which . . . only a sole proprietor'' participates ''will not be covered under title I.'' 29 CFR 2510.3–3(b). The Department seeks comments on whether additional or different regulatory amendments should be made to confirm or clarify the long-established exclusion from ERISA of solo 401(k) plans, given the proposal to permit working owners to participate in ERISA-covered ARPs.

Comments are also invited on the interaction of the proposal with and consequences under other state and federal laws, including the interaction

[43] The earned income standard in the proposal is informed by Federal tax standards, including section 162(l) of the Code, that describe conditions for self-employed individuals to deduct the cost of health insurance. Thus, for purposes of the working owner provisions of paragraph (d) of the proposal, the definitions of ''wages'' and ''self-employment income'' in Code sections 3121(a) and 1402(b) (but without regard to the exclusion in section 1402(b)(2)), respectively, would apply.

[44] Under section 401(c) of the Code, a self-employed individual must have earned income in order to participate in a qualified retirement plan. The Department's provisional view is that it seems unlikely that a ''working owner'' as defined in paragraph (d)(2) of the proposal who is not a common law employee would fail to meet the requirements of section 401(c) of the Code. The Department invites comments on whether this view is correct, and if not correct, whether a final rule should include changes to the working-owner definition for MEPs designed to be qualified under section 401(a) of the Code. For example, a final rule could further limit the definition of working owners to self-employed individuals described in 401(c) of the Code. One way to accomplish this limitation could be to add a condition to paragraph (d)(2) of the proposal to ensure that the working owner ''is an employee within the meaning of section 401(c)(1) of the Code, and the employer of such individual is the person treated as his employer under section 401(c)(4) of the Code.'' Alternatively, consistent with E.O. 13847 and the Code, the Department invites comments on whether, if the Department's provisional view is not correct, the Secretary of the Treasury should consider action pursuant to Section 2(b) of E.O. 13847, which directs the Secretary of the Treasury to consider proposing amendments to regulations or other guidance regarding the circumstances under which a MEP must satisfy the tax qualification requirements in the Code. Because the Secretary of the Treasury has interpretive jurisdiction over section 401 of the Code, any comments relating to this topic will be shared with the Department of the Treasury.

[45] A 2012 GAO report separated MEPs into four categories. U.S. Government Accountability Office, GAO, ''12–665, ''Private Sector Pensions—Federal Agencies Should Collect Data and Coordinate Oversight of Multiple Employer Plans,'' (Sept. 2012) (*https://www.gao.gov/products/GAO-12-665*).

with Code section 413(c), which would apply to all tax-qualified MEPs including those described in paragraph (b) and (c) of the proposal.[46] The Department's provisional view is that it seems unlikely that a MEP that is sponsored and maintained by an employer group or association or PEO, and that is subject to the rules of section 413(c) of the Code, would fail to qualify under the Department's proposed criteria. The Department invites comments on whether this view is correct and, if not correct, on the extent to which grandfathering rules or transitional assistance or guidance might be advisable.

The Department also invites comments on whether any notice or reporting requirements are needed to ensure that participating employers, participants, and beneficiaries of MEPs, are adequately informed of their rights or responsibilities with respect to MEP coverage and that the public has adequate information regarding the existence and operations of MEPs. Comments are also solicited for data, studies or other information that would help estimate the benefits, costs, and transfers.

As indicated, a MEP would be a single ERISA plan under title I of ERISA if it complies with the requirements in the proposed rule. As such, ERISA would apply to the MEP in the same way that ERISA applies to any employee benefit plan, but the MEP sponsor, typically acting as the plan's administrator and named fiduciary, would administer the MEP.[47] This person will have considerable discretion in determining, as a matter of plan design or a matter of plan administration, how to treat the different interests of the multiple participating employers and their employees. Accordingly, this person, in distributing, investing, and managing the MEP's assets, must be neutral and fair, dealing impartially with the participating employers and their employees, taking into account any differing interests.[48] For example, when the fiduciary of a large MEP uses its size to negotiate and secure discounted prices on investments and other services from plan services providers, as is generally required by ERISA, the fiduciary is bargaining on behalf of all participants regardless of the size of their employer, and should take care to see that these advantages are allocated among participants in an evenhanded manner. Treating participating employers and their employees differently without a reasonable and equitable basis would raise serious concerns for the Department. Comments are invited on whether there is a need for guidance or clarification on the application of this principle to the various aspects of MEP administration, including investment management, recordkeeping, and allocating plan costs and expenses among the participants and beneficiaries of participating employers.

F. Regulatory Impact Analysis

1. Summary

As discussed earlier in this preamble, this proposed rule is intended to facilitate the creation and maintenance of MEPs by clarifying the circumstances under which a person may act as an ''employer'' within the meaning of ERISA section 3(5) in sponsoring a MEP. Workplace retirement plans provide an effective way for employees to save for retirement. Many hardworking Americans, however, do not have access to a retirement plan at work, especially those employed by small employers or acting as ''working owners'' without employees (referred to herein as the ''self-employed''). This has become a more significant issue as employees are living longer and facing the difficult prospect of outliving their retirement savings. Expanding access to private sector MEPs could encourage the formation of workplace retirement plans and broaden the access to such plans among small employers and the self-employed.

Many employer groups and associations have a thorough knowledge of the economic challenges their members face. Using this knowledge and the regulatory flexibility provided by this proposed rule, employer groups and associations could sponsor MEPs tailored to the retirement plan needs of their members at lower costs than currently available options. Thus, this proposed rule, if finalized, could provide employers with an important option to increase access of workers, particularly those employed at small businesses and the self-employed, to high-quality workplace retirement plans.

Small employers could benefit from economies of scale by participating in MEPs, which could reduce their administrative burdens, fiduciary liability exposure, and plan fees. Like other large retirement plans, large MEPs created by sponsors meeting the conditions set forth in the proposal would enjoy scale discounts and might exercise bargaining power with financial services companies. Large MEPs would pass some of these savings through to participating small employers. In particular, investment funds with tiered pricing have decreasing expense ratios based on the aggregate amount of money invested by a single plan.[49] As a single plan, MEPs should lower the expense ratio for investment management through the pooling of investments from member employers because the fee thresholds would apply at the MEP level rather than at the member employer level.[50]

Many well-established, geographically based organizations, such as local chambers of commerce, are strong candidates to sponsor MEPs. Currently, these geographically based organizations are restricted from doing so as a sponsor of a single plan under title I of ERISA, however, unless their MEP meets the requirements of the Department's 2012 subregulatory guidance for determining whether groups or associations of employers, or PEOs were able to act as employers under section 3(5) of ERISA. Such previous guidance requires groups or associations to have a particularly close economic or representational nexus to employers and employees participating in the plan. Many groups or associations and PEOs have identified these criteria, along with the absence of a clear

[46] Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over section 413 of the Code and ERISA section 210. Accordingly, any comments relating to section 413(c) of the Code will be shared with the Department of the Treasury.

[47] As noted elsewhere, in the case of a PEO MEP under paragraph (c) of the proposal, the PEO, as the plan sponsor, must always act as the plan's administrator (within the meaning of section 3(16)(A)) and a named fiduciary (within the meaning of section 402 of ERISA) of the MEP.

[48] *See* Field Assistance Bulletin No. 2003–03 (addressing what rules apply to how expenses are allocated among plan participants in a defined contribution pension plan). *See also Varity Corp.* v. *Howe,* 516 U.S. 489, 514 (1996) (''The common law of trusts recognizes the need to preserve assets to satisfy future, as well as present, claims and requires a trustee to take impartial account of the interests of all beneficiaries.''); *Restatement (Second) of Trusts* section 183 (''If a trust has two or more beneficiaries, the trustee, in distributing, investing, and managing the trust property, shall deal impartially with them, taking into account any differing interests.'')

[49] According to Morningstar, nearly half of all investment funds have management fee breakpoints at which fees are automatically reduced upon reaching an investment threshold. *See* Michael Rawson and Ben Johnson, ''2015 Fee Study: Investors Are Driving Expense Ratios Down,'' Morningstar, 2015, available at *https://news.morningstar.com/pdfs/2015_fee_study.pdf.*

[50] MEPs create a pool of assets for investment that, at the investment management level, are no different from pools of assets from other employee benefit plans. Consistent with the Department's view that the pool of assets is a single plan, the Department expects that breakpoints for expense ratios would be applied at the MEP level rather than at the member employer level. The Department solicits comments on this matter.

pathway for PEOs to sponsor MEPs, as major impediments to the expansion of MEPs that are treated as single plans. By providing greater flexibility governing the sponsorship of MEPs, the Department expects that this proposed rule would reduce costs and increase access to workplace retirement plans for many employees of small businesses and the self-employed.

Other benefits of the expansion of MEPs include: (1) Increased economic efficiency as small firms can more easily compete with larger firms in recruiting and retaining workers; (2) increased tax equity as workers who previously did not have access to a qualified workplace retirement plan begin to benefit from tax savings when their employers provide access to a retirement plan through a MEP; (3) enhanced portability for employees that leave employment with an employer to work for another employer participating in the same MEP; and (4) higher quality data (more accurate and complete) reported on the Form 5500.

The Department is aware that MEPs could be the target of fraud or abuse. By their nature, MEPs have the potential to build up a substantial amount of assets quickly and the effect of any abusive schemes on future retirement distributions may be hidden or difficult to detect for a long period. The Department, however, is not aware of direct information indicating that the risk for fraud and abuse is greater for MEPs than for single employer defined contribution pension plans. Furthermore, the Department has compliance assistance and enforcement systems in place to safeguard plan assets.

The Department believes that participation in workplace retirement plans would increase because of this proposal; however, there is some uncertainty regarding the extent. Participation levels in workplace retirement plans depend on both how many employers decide to offer plans and how many employees choose to participate in those plans. An employer's decision to offer a retirement plan relies on many factors, only some of which this proposed rule would affect. If more employers adopt MEPs, it is unclear how many of their employees would choose to enroll and by how much aggregate retirement savings would increase. Nevertheless, given the significant potential for MEPs to expand access to affordable retirement plans, the Department has concluded that this proposed rule would deliver social benefits that justify its costs. Its analysis is explained more fully below.

2. Executive Orders

Executive Orders 12866 [51] and 13563 [52] direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Under Executive Order 12866, ''significant'' regulatory actions are subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this proposed rule is economically significant within the meaning of section 3(f)(1) of the Executive Order. Therefore, OMB has reviewed the proposed rule pursuant to the Executive Order. The background to the proposed rule is discussed earlier in this preamble. This section assesses the expected economic effects of the proposed rule.

3. Introduction and Need for Regulation

While many Americans have accumulated significant retirement savings, many others have little, if any, assets saved for retirement. For example, the Employee Benefit Research Institute projects that 24 percent of the population aged 35–64 will experience a retirement savings shortfall, meaning resources in retirement will not be sufficient to meet their average retirement expenditures.[53] If uncovered long-term care expenses from nursing homes and home health care are included in the retirement readiness calculation, 43 percent of that population will experience a shortfall, and the projected retirement savings deficit is $4.13 trillion.[54]

Among all workers aged 26 to 64 in 2013, 63 percent participated in a retirement plan either directly or through a working spouse. That percentage ranged, however, from 52 percent of those aged 26 to 34 to 68 percent of those aged 55 to 64; and from 25 percent for those with adjusted gross income (AGI) less than $20,000 per person to 85 percent for those with AGI of $100,000 per person or more.[55]

Workplace retirement plans often provide a more effective way for employees to save for retirement than saving in their own IRAs. Compared with IRAs, workplace retirement plans provide employees with: (1) Higher contribution limits; (2) generally lower investment management fees as the size of plan assets increases; (3) a well-established uniform regulatory structure with important consumer protections, including fiduciary obligations, recordkeeping and disclosure requirements, legal accountability provisions, and spousal protections; (4) automatic enrollment; and (5) stronger protections from creditors.[56] At the same time, workplace retirement plans provide employers with choice among plan features and the flexibility to tailor retirement plans that meet their business and employment needs.

In spite of these advantages, many workers, particularly those employed by small employers and the self-employed, lack access to workplace retirement plans. Table 1 below shows that at business establishments with fewer than 50 workers, 49 percent of the workers have access to retirement benefits.[57] In contrast, at business establishments with more than 500 workers, 88 percent

[51] 58 FR 51735 (Oct. 4, 1993).

[52] 76 FR 3821 (Jan. 21, 2011).

[53] Jack VanDerhei, ''EBRI Retirement Security Projection Model ®(RSPM)—Analyzing Policy and Design Proposals,'' *Employee Benefit Research Institute Issue Brief,* no. 451 (May 31, 2018).

[54] *Id.*

[55] Peter J. Brady, ''Who Participates in Retirement Plans,'' *ICI Research Perspective,* vol. 23, no. 05, (July 2017.).

[56] Section 522 of the Bankruptcy Code (11 U.S.C. 522), provides an unlimited exemption for SEP and Simple IRAs, and pension, profit sharing, and qualified plans, such as 401(k)s, as well as plan assets that are rolled over to an IRA. However, other traditional IRAs and Roth IRAs are protected up to a value of $1,283,025 per person for 2018 (inflation adjusted).

[57] These statistics apply to private industry. U.S. Bureau of Labor Statistics, National Compensation Survey, Employee Benefits in the U.S. (March 2018).

of workers have access to retirement benefits. Table 1 also shows that many small employers do not offer a retirement plan to their workers.[58]

TABLE 1—RETIREMENT PLAN COVERAGE BY EMPLOYER SIZE

Establishment size: Number of workers	Workers:		Establishments:
	Share with access to a retirement plan (%)	Share participating in a retirement plan (%)	Share offering a retirement plan (%)
1–49	49	34	45
50–99	65	46	75
100–499	79	58	88
500+	89	76	94
All	66	50	48

Source: These statistics apply to private industry. U.S. Bureau of Labor Statistics, National Compensation Survey, Employee Benefits in the U.S. (March 2018).

Surveys of employers have suggested several reasons employers—especially small businesses—do not offer a workplace retirement plan to their employees. Regulatory burdens and complexity add costs and can be significant disincentives. A survey by the Pew Charitable Trusts found that only 53 percent of small-to mid-sized businesses offer a retirement plan, and 37 percent of those not offering a plan cited cost as the main reason.[59] Employers often also cite annual reporting costs and exposure to potential fiduciary liability as major impediments to plan sponsorship.[60]

Some employers may also have not offered retirement benefits because they do not perceive such benefits as necessary to recruit and retain good employees.[61] In focus groups, many employers not offering retirement benefits reported believing that their employees would prefer to receive higher salaries, more paid time-off, or health insurance benefits than retirement benefits.[62] Small employers themselves may not have much incentive to offer retirement benefits because they are not sure how long their businesses are going to survive. This may lead them to focus on short-term concerns rather than their employees' long-term well-being. In analyzing new establishments, researchers found that 56 percent did not survive for four years.[63]

Many small businesses also may have not taken advantage of the existing opportunities to establish workplace retirement savings plans because of a lack of awareness. As found in a Pew survey, two-thirds of small and midsize employers that were not offering a retirement plan said they were not at all familiar with currently available options such as Simplified Employee Pension (SEP) and Savings Incentive Match Plan for Employees (SIMPLE) plans.[64]

MEPs may address several of these issues. Specifically, to the extent that MEPs reduce the total cost of providing various types of plans to small employers, market forces may lead MEPs to offer and promote such plans to small employers that would otherwise have been overlooked because of high costs. Moreover, groups or associations and PEOs sponsoring MEPs sometimes may have more success raising (1) the awareness of retirement savings plan options for small employers, particularly where such employers are already clients or members, and (2) the benefits of establishing such plans as a tool for recruiting or retaining qualified workers.

Small businesses typically have fewer administrative efficiencies and less potential bargaining power than large employers do. The proposal could provide a way for small employers and the self-employed to band together in MEPs that, as single, large plans, have some of the same economic advantages as other large plans. As discussed above, the Department's prior subregulatory guidance limits the ability of small employers and self-employed individuals to join MEPs and thereby to realize attendant potential administrative cost savings. With certain exceptions, each employer operating a separate plan must file its own Form 5500 annual report, and generally, if the plan has 100 or more participants, an accountant's audit of the plan's financial position instead of relying on the audit of a combined plan.[65] Each small employer also would have to obtain a separate fidelity bond satisfying the requirements of ERISA.[66]

As stated earlier in this preamble, on August 31, 2018, President Trump issued Executive Order 13847,

[58] *Id.*

[59] The Pew Charitable Trusts, ''Employer Barriers to and Motivations for Offering Retirement Benefits,'' *Issue Brief* (June 21, 2017). *http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/06/employer-barriers-to-and-motivations-for-offering-retirement-benefits#0-overview.*

[60] See U.S. Government Accountability Office, GAO–12–326: ''Private Pensions: Better Agency Coordination Could Help Small Employers Address Challenges to Plan Sponsorship'' (March 2012) at 18–19. (*https://www.gao.gov/products/GAO-12-326*).

[61] Employee Benefit Research Institute, ''Low Worker Take Up of Workplace Benefits May Impact Financial Wellbeing'' (April 10, 2018).

[62] The Pew Charitable Trusts, ''Employer Barriers to and Motivations for Offering Retirement Benefits,'' 2017.

[63] Amy E. Knaup and Merissa C. Piazza, ''Business Employment Dynamics data: survival and longevity, II,'' Monthly Labor Review (Sept. 2007).

[64] The Pew Charitable Trusts, ''Employer Barriers to and Motivations for Offering Retirement Benefits,'' 2017.

[65] Note that ERISA regulations exempt small plans, generally those with under 100 participants, from the audit requirement if they meet certain conditions. 29 CFR 2520.104–46. In 2015, more than 99 percent of small defined contribution pension plans that filed the Form 5500 or the Form 5500–SF did not attach an audit report.

[66] ERISA section 412 and related regulations (29 CFR 2550.412–1 and 29 CFR part 2580) generally require every fiduciary of an employee benefit plan and every person who handles funds or other property of such plan to be bonded. ERISA's bonding requirements are intended to protect employee benefit plans from risk of loss due to fraud or dishonesty on the part of persons who handle plan funds or other property. ERISA refers to persons who handle funds or other property of an employee benefit plan as plan officials. A plan official must be bonded for at least 10% of the amount of funds he or she handles, subject to a minimum bond amount of $1,000 per plan with respect to which the plan official has handling functions. In most instances, the maximum bond amount that can be required under ERISA with respect to any one plan official is $500,000 per plan; however, the maximum required bond amount is $1,000,000 for plan officials of plans that hold employer securities.

''Strengthening Retirement Security in America,'' stating that ''[i]t shall be the policy of the Federal Government to promote programs that enhance retirement security and expand access to workplace retirement savings plans for American workers.'' The Executive Order directed the Secretary of Labor to examine policies that would: (1) Clarify and expand the circumstances under which United States employers, especially small and mid-sized businesses, may sponsor or participate in a MEP as a workplace retirement savings option offered to their employees, subject to appropriate safeguards; and (2) increase retirement security for part-time workers, sole proprietors, working owners, and other entrepreneurial workers with non-traditional employer-employee relationships by expanding their access to workplace retirement savings plans, including MEPs. The Executive Order further directed, to the extent permitted by law and supported by sound policy, that the Department consider within 180 days of the date of the Executive Order whether to issue a notice of proposed rulemaking, other guidance, or both, that would clarify when a group or association of employers, or other appropriate business or organization could be an ''employer'' within the meaning of ERISA section 3(5).

In response to the Executive Order, the Department has conducted a thorough review of its current policies regarding MEPs and determined that its existing interpretive position is unnecessarily narrow. The Department has concluded that regulatory action is appropriate to establish greater flexibility in the regulatory standards governing the criteria that must exist in order for an employer group or association or PEO to sponsor a MEP.

The proposed rule generally would provide this flexibility by making five important changes to the Department's prior subregulatory guidance. First, it would clarify the existing requirement in prior subregulatory guidance that bona fide groups or associations must have at least one substantial business purpose unrelated to the provision of benefits. Second, it would relax the requirement that group or association members share a common interest, as long as they operate in a common geographic area. Third, it would make clear that groups or associations whose members operate in the same industry could sponsor MEPs, regardless of geographic distribution. Fourth, it would clarify that working owners without employees are eligible to participate in MEPs sponsored by bona fide employer groups or associations that meet the requirements of the proposal. Fifth, it would establish criteria under which ''bona fide'' PEOs may sponsor MEPs covering the employees of their client employers.

The proposed criteria also result in more MEPs being treated consistently under the Code and title I of ERISA, and such consistency could remove another barrier inhibiting the broader establishment of MEPs. As discussed earlier in this preamble, a retirement plan covering employees of multiple employers that satisfies the requirements of IRC section 413(c) is considered a single plan under IRC section 413(c), which addresses the tax-qualified status of MEPs. Moreover, in Revenue Procedure 2002–21, 2002–1 C.B. 911, the IRS issued guidance that provided an avenue for PEOs to administer a MEP for the benefit of worksite employees of client organizations and not violate the exclusive benefit rule.[67]

By establishing greater flexibility in the standards and criteria for sponsoring MEPs than previously articulated in subregulatory interpretive rulings under ERISA section 3(5), the proposed regulation would facilitate the adoption and administration of MEPs and expand access to, and lower the cost of, workplace retirement savings plans, especially for employees of small employers and certain self-employed individuals. At the same time, reflecting the position taken in its subregulatory guidance, the Department intends that the conditions included in the proposed regulation would continue to distinguish plans sponsored by entities that satisfy ERISA's definition of ''employer'' from arrangements or services offered by other entities.

4. Affected Entities

If finalized, the proposed rule may encourage both the creation of new MEPs and the expansion of existing MEPs. In order to determine the entities that this proposal would affect and its effects on those entities, the Department has reviewed the characteristics of existing MEPs that file Forms 5500.[68] As explained below, however, the information available on the Form 5500 includes both defined contribution and defined benefit MEPs. This proposed rule is limited to defined contribution pension plans and this document generally refers only to defined contribution MEPs (DC MEPs) when referring to ''MEPs.'' Because they are part of the multiple employer pension plan filing population, defined benefit MEPs are included in the discussion below to understand the universe of MEPs filing the form. This section uses the terms DC MEPs and DB MEPs to differentiate the types of plans that currently file Forms 5500.

Currently DC MEPs comprise only a small share of the private sector retirement system, as shown in Table 2.[69] Based on the latest available data, about 4,592 DC MEPs exist with approximately 5.1 million total participants, 4.1 million of whom are active participants. DC MEPs hold about $232 billion in assets.[70]

TABLE 2—CURRENT STATISTICS ON MEPS

	Number of MEPs	Total participants	Active participants	Total assets
MEP DC Plans	4,592	5.1 million	4.1 million	$232 billion.

[67] See Internal Revenue Code (IRC) section 413(c)(2) and § 1.413–2(c) of the Income Tax Regulations, which provide that, in determining whether a MEP is for the exclusive benefit of its employees (and their beneficiaries), all employees participating in the plan are treated as employees of each such employer. IRC sections 413(c)(1) and (3) provide that IRC sections 410(a) (participation) and 411 (minimum vesting standards) also are applied as if all employees of each of the employers who maintain the plan were employed by a single employer. Under Treas. Reg. § 1.413–2(a)(2), a plan is subject to the requirements of IRC section 413(c) if it is a single plan and the plan is maintained by more than one employer.

See generally Treas. Reg. §§ 1.413–1(a)(2),1.413–2(a)(2), and 1.414(l)–1(b)(1). However, the minimum coverage requirements of IRC section 410(b) and related nondiscrimination requirements are generally applied to a MEP on an employer-by-employer basis.

[68] ''Forms 5500'' refers collectively to the Form 5500 (Annual Return/Report of Employee Benefit Plan) and the Form 5500–SF (Annual Return/Report of Small Employee Benefit Plan).

[69] EBSA performed these calculations using the 2015 Research File of Form 5500 filings. The estimates are weighted and rounded, which means they may not sum precisely. The Department derived these estimates by identifying plans that indicated ''multiple employer plan'' status on the Form 5500 Part 1 Line A. Then, the Department removed nine plans that upon further review appear to be multiemployer plans.

[70] *Id.*

TABLE 2—CURRENT STATISTICS ON MEPS—Continued

	Number of MEPs	Total participants	Active participants	Total assets
As a share of all ERISA DC plans	0.7%	5.3%	5.3%	4.4%.
MEP DC Plans	4,592	5.1 million	4.1 million	$232 billion.
401(k) Plans	4,345	4.8 million	3.9 million	$216 billion.
Other DC Plans	248	0.4 million	0.3 million	$15 billion.
MEP DC Plans	4,592	5.1 million	4.1 million	$232 billion.
MEP DB Plans	242	1.5 million	0.6 million	$132 billion.
Total MEP Plans	4,834	6.6 million	4.7 million	$363 billion.

Source: EBSA performed these calculations using the 2015 Research File of Form 5500 filings. The estimates are weighted and rounded, which means they may not sum precisely. The Department derived these estimates by identifying plans that indicated ''multiple employer plan'' status on the Form 5500 Part 1 Line A. Then, the Department removed nine plans that upon further review appear to be multiemployer plans.

Some MEPs are very large; 59 percent of total participants are in MEPs with 10,000 or more participants.[71] Furthermore, 98 percent of total participants are in MEPs with 100 or more participants. There are 47 MEPs holding over $1 billion in assets each.[72] In existing DC MEPs, 91.6 percent of participants direct all of the investments, another 5.6 percent direct the investment of a portion of the assets, and the remainder did not direct the investment of any of the assets.[73]

There are caveats to keep in mind when interpreting the data presented in Table 2 above. For example, under the Department's prior subregulatory guidance, some plans established and maintained by groups of employers that might meet the conditions of the proposed rule, would currently be deemed to be individual plans sponsored by each of the employers in the group. In these circumstances, each participating employer is required to file a Form 5500 just as it would if it established its own plan. These filings are indistinguishable from typical single-employer plans and do not appear in the data set as identifiable multiple employer plans.[74]

As stated earlier in this preamble, PEOs generally are entities that enter into agreements with client employers to provide certain employment responsibilities, such as tax withholding, to the individuals who perform services for the client employers. At the end of 2017, there were 907 PEOs operating in the United States, providing services to 175,000 client employers with 3.7 million employees.[75] The proposed rule would allow certain PEOs meeting the requirements of paragraph (c) to sponsor MEPs and offer coverage to their client employers' employees.

This proposal would benefit many workers that might otherwise tend to lack access to high-quality, affordable, on-the-job retirement savings opportunities. These workers include self-employed individuals, sole proprietors without employees, participants in the ''gig'' economy, ''contingent'' workers, and workers in various ''alternative'' work arrangements. Although there are other retirement savings vehicles available to these workers, the workers in these categories are less likely to access and participate in retirement plans. For example, only six percent of self-employed individuals participated in retirement plans in 2013.[76] Among contingent workers, only 23 percent were eligible to participate in employer-provided retirement plans in 2017.[77] The proposal would provide many of these workers with a new opportunity to access a retirement plan by joining a MEP. Approximately 8 million self-employed workers between ages 21 and 70, representing 6 percent of all similarly aged workers, have no employees and usually work at least 20 hours per week, and under this proposal would become eligible to join MEPs.[78] These workers are involved in a wide range of occupations: l\Lawyers, doctors, real estate agents, childcare providers, as well as ''gig economy'' workers, who provide on-demand services, often through online intermediaries, such as ride-sharing online platforms. In many respects, the self-employed are quite different from employees in a traditional employer-employee arrangement. For example, self-employed persons often have complex work arrangements—they are more likely to work part-time or hold multiple jobs.[79]

Gig economy workers, in particular, may face obstacles to saving for retirement. While a number of tax-preferred retirement savings vehicles are already available to them, many might find it difficult and expensive to navigate these options on their own.[80] Relatively few gig workers have access to employer-sponsored retirement plans,

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] In addition, there are some plans that are erroneously indicating that they are ''multiple employer plans'' rather than ''single-employer plans'' under title I of ERISA. These plans may in fact be group or association or PEO-type MEPs that do not meet the conditions of the prior DOL subregulatory guidance. This distorts the database and leads to inaccurate estimates. In particular, the high number of plans erroneously reporting that they are MEPs likely overestimates the number of existing MEPs for purposes of title I of ERISA and underestimates the average size of MEPs.

[75] Laurie Bassi and Dan McMurrer, ''An Economic Analysis: The PEO Industry Footprint in 2018,'' National Association of Professional Employer Organizations, September 2018, available at *https://www.napeo.org/docs/default-source/white-papers/2018-white-paper-final.pdf?sfvrsn=6.*

[76] Craig Copeland, ''Employment-Based Retirement Plan Participation: Geographic Differences and Trends, 2013,'' *EBRI Issue* Brief, no. 405, October 2014. In this report, the self-employed include mostly unincorporated self-employed.

[77] Bureau of Labor Statistics, ''Contingent and Alternative Employment Arrangements—May 2017,'' June 7, 2018.

[78] DOL tabulations of the June 2018 Current Population Survey basic monthly data.

[79] For tax administrative data, see Emilie Jackson, Adam Looney, and Shanthi Ramnath, ''The Rise of Alternative Work Arrangements: Evidence and Implications for Tax Filing and Benefit Coverage.'' U.S. Department of Treasury, Office of Tax Analysis, Working Paper 114 (January 2017). For survey data, see the Survey of Business Owners and Self-Employed Persons, 2012 from the Census Bureau at *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=SBO_2012_00CSCBO04&prodType=table.*

[80] For related information see, for example, Jonathan Kahler, ''Retirement planning in a 'gig economy','' Vanguard, June 13, 2018, available at *https://vanguardblog.com/2018/06/13/retirement-planning-in-a-gig-economy/,* which explains that a gig worker is ''running your own HR department and you're the benefits manager, which means taking sole responsibility for your retirement.''

one survey found.[81] According to another survey, many traditional workers who pursue gig work on the side do so at least partly to help them save more for retirement. On the other hand, most of those for whom gig work is their main job have less than $1,000 set aside for retirement.[82] MEPs could help raise awareness and ease entry to retirement coverage for broad classes of gig workers such as on-demand drivers or workers in cities where gig work is common.

According to the May 2017 Contingent Worker Supplement survey, 3.8 percent of workers identified themselves as ''contingent'' workers,[83] meaning they did not expect their jobs to last or reported that their jobs were temporary. About 10 percent of workers fell under ''alternative,'' non-traditional work arrangements that include independent contractors, on-call workers, temporary help agency workers, and workers provided by contract firms.[84] The group of contingent workers and the group of workers in alternative arrangements overlap. Using a different survey, Katz and Krueger, found that the share of workers in alternative arrangements was approximately 15.8 percent in 2015.[85]

Policymakers have expressed concern about whether some gig workers, and, more generally self-employed persons, have access to retirement plans and adequately save for retirement. According to the Contingent Worker Survey, in 2017, 23 percent of contingent workers were eligible to participate in employer provided retirement plans, which is substantially lower than the corresponding 48 percent figure for non-contingent workers. Workers in alternative arrangements (13 percent for temporary help agency workers, 35 percent for on-call workers, and 48 percent for workers provided by contract firms) were less likely than workers with traditional arrangements (51 percent) to be eligible for employer-provided retirement plans.[86] Thus, by allowing the self-employed to participate in MEPs, the proposal would increase retirement plan access for them.

5. Benefits

a. Expanded Access to Coverage

Generally, employees rarely choose to save for retirement outside of the workplace, despite having options to save in tax-favored savings vehicles, such as investing either in traditional IRAs or Roth IRAs. Thus, the availability of workplace retirement plans is a significant factor affecting whether workers save for their retirement. Yet, despite the advantages of workplace retirement plans, access to such plans for employees of small businesses is relatively low. The proposal's expansion of access to certain MEPs would enable groups of private-sector employers to participate in a collective retirement plan and provide employers with another efficient way to reduce some costs of offering workplace retirement plans. Thereby, more plan formation and broader availability of such plans would occur, especially among small employers.

The MEP structure could address significant concerns from employers about the costs to set up and administer retirement benefit plans. In order to participate in a MEP, employers generally would be required to execute a participation agreement or similar instrument setting forth the rights and obligations of the MEP and participating employers. These employers would then be participating in a single plan, rather than sponsoring their own separate, individual ERISA-covered plan; therefore the employer group or association or PEO would be acting as the ''employer'' sponsoring the MEP within the meaning of section 3(5) of ERISA. That employer group or association typically, or in the case of PEOs always, would assume the roles of plan administrator and named fiduciary. The individual employers would not be directly responsible for the MEP's overall compliance with ERISA's reporting and disclosure obligations. Accordingly, the MEP structure could address small employers' concerns regarding the cost associated with fiduciary liability of sponsoring a retirement plan by effectively transferring much of the legal risks and responsibilities to professional fiduciaries who would be responsible for managing plan assets and selecting investment menu options, among other things. Participating employers' continuing involvement in the day-to-day operations and administration of their MEP generally could be limited to enrolling employees and forwarding voluntary employee and employer contributions to the plan. Thus, participating employers could keep more of their day-to-day focus on managing their businesses, rather than their pension plans.

Congress has repeatedly enacted legislation intended to lower costs, simplify requirements, and ease administrative burdens for small employers to sponsor retirement plans. For example, the Revenue Act of 1978[87] and the Small Business Job Protection Act of 1996[88] established the SEP IRA plan and the SIMPLE IRA plan, respectively, featuring fewer compliance requirements than other plan types. The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)[89] included provisions that are intended to increase access to retirement plans for small businesses by: (1) Eliminating top-heavy testing requirements for safe harbor 401(k) plans; (2) increasing contribution limits for employer-sponsored IRA plans and 401(k) plans; and (3) creating tax credits for small employers to offset new plan startup costs and for individuals within certain income limits who make eligible contributions to retirement plans. Despite these legislative efforts to increase access to retirement savings plans for small employers, as shown in Table 1, above, the percentage of the U.S. workforce participating in a workplace retirement plan remains around 50 percent. Therefore, a critical question is whether MEPs meeting the requirements of the proposal can increase access to workplace retirement plans when other initiatives have had limited effect. Several factors indicate to the Department that they can.

First, the Department believes that employers may be more likely to participate in a MEP sponsored by a PEO, group, or association of employers with which they have a pre-existing relationship based on trust, familiarity, and efficiency stemming from that relationship. For example, a PEO that performs payroll or human resources

[81] ''Gig Workers in America: Profiles, Mindsets, and Financial Wellness,'' Prudential, 2017, available at *http://research.prudential.com/documents/rp/Gig_Economy_Whitepaper.pdf.*

[82] ''Gig Economy and the Future of Retirement,'' Betterment, 2018, available at *https://www.betterment.com/wp-content/uploads/2018/05/The-Gig-Economy-Freelancing-and-Retirement-Betterment-Survey-2018_edited.pdf.* This same survey found, however, that most gig workers are paying off debt. It is sometimes better to retire debt before saving aggressively for retirement.

[83] U.S. Bureau of Labor Statistics, ''Contingent and Alternative Employment Arrangements—May 2017'' (June 7, 2018).

[84] *Id.*

[85] Lawrence F. Katz & Alan B. Krueger, ''The Rise and Nature of Alternative Work Arrangements in the United States, 1995–2015,'' (June 18, 2017). This survey has a smaller sample size than the Contingent Worker Survey conducted by the Bureau of Labor Statistics.

[86] The self-employed—both incorporated and unincorporated—and the independent contractors were excluded from calculating these percentages. *See* U.S. Bureau of Labor Statistics, ''Contingent and Alternative Employment Arrangements—May 2017'' (2018).

[87] Public Law 95–600, sec. 152, 92 Stat. 2763, 2791.

[88] Public Law 104–188, sec. 1421, 110 Stat. 1755, 1792.

[89] Public Law 107–16, 115 Stat. 38.

services for an employer would have connected information technology infrastructures that would facilitate efficient transfers of employee and employer contributions. Similarly, small employers obtaining health insurance coverage through an AHP sponsored by a group or association may find it convenient and cost effective to establish retirement plans offered by the same group or association. In many cases, the group or association and small employers may link their information technology systems to collect health care premiums from participating employers,[90] and that infrastructure could also be used to collect retirement contributions, resulting in IT-related start-up costs savings. In addition, small employers' and self-employed individuals may encounter fewer administrative burdens if the same group or association administers both their health and retirement plans.

Second, employers may be incentivized to sponsor these plans based on cost savings that may occur when payroll services are integrated with retirement plan record-keeping systems. Several firms in the market already provide payroll services and plan record-keeping services particularly tailored to small employers.[91] These firms can afford to provide these integrated services at a competitive price, suggesting that integrating these services could lead to some efficiency gains. Since PEOs already provide payroll services to client employers, a MEP sponsored by a PEO can reap the benefits of integrating these services, which can in turn benefit participating employers through lower fees and ease of administration. According to a survey of small employers, those with outsourced payroll systems are twice as likely to begin offering a retirement plan in the next two years as those that handle their payroll internally.[92] This may be evidence of causation: Outsourcing payroll may encourage employers to offer retirement plans because it makes such offering less costly, as some of the information technology infrastructure necessary to maintain a retirement plan already is in place. On the other hand, this might be mere correlation, wherein small employers generating steady revenue streams are more likely to outsource payroll systems and also more likely to sponsor retirement plans in the near future because they are generally more financially secure.

As further discussed in the uncertainty section below, the Department does not have sufficient data to determine precisely the likely extent of participation by small employers and the self-employed in MEPs under the proposal. However, overall, the Department believes that the proposed rule would provide a new valuable option for small employers and the self-employed to adopt retirement savings plans for their employees, which could increase access to retirement plans for many American workers.

b. Reduced Fees and Administration Savings

Many MEPs would benefit from scale advantages that small businesses do not currently enjoy, and MEPs would pass some of the attendant savings onto participating employers and participants.[93] Grouping small employers together into a MEP could facilitate savings through administrative efficiencies (economies of scale) and sometimes through price negotiation (market power). The degree of potential savings may be different for different types of administrative functions. For example, scale efficiencies can be very large with respect to asset management, and may be smaller, but still meaningful, with respect to recordkeeping.

Large scale may create two distinct economic advantages for MEPs. First, as scale increases, marginal costs for MEPs would diminish, and MEPs would spread fixed costs over a larger pool of member employers and employee participants, creating direct economic efficiencies. Second, larger scale may increase the negotiating power of MEPs. Negotiating power matters when competition among financial services providers is less than perfect and they can command greater profits than in an environment with perfect competition. Very large plans may sometimes exercise their own market power to negotiate lower prices, translating what would have been higher revenue for financial services providers into savings for member employers and employee participants.

There may be times when scale efficiencies would not translate into savings for small employer members and their employee participants because regulatory requirements applicable to large MEPs may be more stringent than those applicable to most separate small plans. For example, some small plans are exempt from annual reporting requirements, and many others are subject to more streamlined reporting requirements than larger plans.

But in most cases, the savings from scale efficiency of MEPs would be larger than the savings from scale efficiencies that other providers of bundled financial services could offer to small employers. First, the market position of MEPs would sometimes provide them with relative advantages over other providers of bundled financial services. For example, existing groups, associations, or PEOs that have multi-purpose relationships with small employers may enjoy lower marginal costs for marketing, distributing, and administering defined benefit plans through MEPs with their member employers than other providers of bundled financial services enjoy. Second, the legal status of MEPs as a single large plan may streamline certain regulatory burdens. For example, a MEP can file a single annual return/report and obtain a single bond in lieu of the multiple reports and bonds necessary when other providers of bundled financial services administer many separate plans.

Relative to separate small employer plans, MEPs operating as a large single plan would likely secure substantially lower prices from financial services companies. Asset managers commonly offer proportionately lower prices, relative to assets invested, to larger investors, under so-called tiered pricing practices. For example, investment companies often offer lower-priced mutual fund share classes to customers whose investments in a fund surpass specified break points.[94] These lower

[90] In the analogous context of health plans, the Department recently issued a final regulation that enhances the ability of unrelated employers to band together to provide health benefits through a single ERISA-covered plan called an AHP. The AHP Rule, which was issued on June 21, 2018, expands access to more affordable, quality health care by amending the definition of ''employer'' under section 3(5) of ERISA for AHPs. Similar to this proposal, the AHP Rule established alternative criteria under ERISA's section 3(5) definition of employer to permit more groups or associations of employers to establish a multiple employer group health plan that is a single employee welfare benefit plan within the meaning of ERISA section 3(1) of ERISA.

[91] Cerulli Associates, *U.S. Retirement Markets 2016* (available at *https://www.cerulli.com/vapi/public/getcerullifile?filecid=Cerulli-US-Retirement-Markets-2016-Information-Packet*).

[92] The Pew Charitable Trusts, ''Employer Barriers to and Motivations for Offering Retirement Benefits,'' 2017.

[93] *See, e.g.,* BlackRock, ''Expanding Access to Retirement Savings for Small Business,'' *Viewpoint* (Nov. 2015).

[94] Sarah Holden, James Duvall, and Elena Barone Chism, ''The Economics of Providing 401(k) Plans: Services, Fees, and Expenses, 2017,'' *ICI Research Perspective* 24: no. 4 (June 2018) (concluding that 401(k) mutual fund investors pay lower expense ratios for a number or reasons, including ''market discipline'' imposed by performance- and cost-

Continued

prices may reflect scale economies in any or all aspects of administering larger accounts, such as marketing, distribution, asset management, recordkeeping, and transaction processing. Large MEPs would likely qualify for lower pricing compared with separate plans of small employers. MEP participants that benefit from lower asset-based fees would enjoy superior investment returns net of fees.

The availability and magnitude of scale efficiencies may be different with respect to different retirement plan services. For example, asset management generally enjoys very large-scale efficiencies. Investors of all kinds generally benefit by investing in large co-mingled pools. Even within large pools, however, small investors often pay higher prices than larger ones. Mutual funds often charge lower ''asset management'' fees for larger investors, in both retail and institutional markets. The Department invites comments on the degree to which large MEPs would provide small employers with scale advantages in asset management larger than those provided by other large pooled asset management vehicles, such as mutual funds, available to separate small plans.

As with asset management, scale efficiencies often are available with respect to other plan services. For example, the marginal costs for services such as marketing and distribution, account administration, and transaction processing often decrease as customer size increases. MEPs, as large customers, may enjoy scale efficiencies in the acquisition of such services. It is also possible, however, that the cost to MEPs of servicing their small employer-members may diminish or even offset such efficiencies. Stated differently, MEPs scale efficiencies may not always exceed the scale efficiencies from other providers of bundled financial services used by small employers that sponsor separate plans. For example, small pension plans sometimes incur high distribution costs, reflecting commissions paid to agents and brokers who sell investment products to plans. MEPs, unlike large single-employer plans, must themselves incur some cost to distribute retirement plans to large numbers of small businesses. But relative to traditional agents and brokers, MEPs could reduce costs if they are able to take economic advantage of members' existing ties to a sponsoring group or association of employers or PEO. This can be a more efficient business model than sending out brokers and investment advisers to reach out to small businesses one-by-one, which could result in lower administrative fees for plan sponsors and participants.

For much the same reason, MEPs sponsored by pre-existing groups or associations of employers that perform multiple functions for their members other than offering retirement coverage (such as chambers of commerce or trade associations) and PEOs might have more potential to deliver administrative savings than those established for the principal purpose of offering retirement coverage. These existing organizations may already have extensive memberships and relationships with small employers; thus, they may have fewer setup, recruitment, and enrollment costs than organizations newly formed to offer retirement benefits. These existing organizations may currently be limited in their ability to offer MEPs to some or all of their existing members and clients (for example, to working owners, workers outside of a common industry, or employers contracting with PEOs) by the Department's prior subregulatory guidance. Under the requirements of this proposed rule, they could newly provide such members and clients with access to MEPs.

All of this suggests that many MEPs will enjoy scale efficiencies greater than the scale efficiencies available from other providers of bundled financial services. However, the scale efficiencies of MEPs would still likely be smaller than the scale efficiencies enjoyed by very large single-employer plans. The Department invites comments on the nature, magnitude, and determinants of MEPs' potential scale advantages, and on the conditions under which MEPs will pass more or less of the attendant savings to different participating employers.

By enabling MEPs to comprise otherwise unrelated small employers and self-employed individuals (1) who are in the same trade, industry, line of business, or profession; or (2) have a principal place of business with a region that does not exceed the boundaries of the same State or metropolitan area (even if the area includes more than one State), this proposed rule would allow more MEPs to be established and to claim a significant market presence and thereby pursue scale advantages. Consequently, this proposal would extend scale advantages to some MEPs that otherwise might have been too small to achieve them and to small employers and working owners that absent the proposal would have offered separate plans (or no plans) but that under this proposal may join large MEPs.

While MEPs' scale advantages may be smaller than the scale advantages enjoyed by very large single-employer plans, it nonetheless is illuminating to consider the deep savings historically enjoyed by the latter. Table 3 shows how much investment fees vary based on the amount of assets in a 401(k) plan.[95] The table focuses on mutual funds, which are the most common investment vehicle in 401(k) plans, and shows that the average expense ratio for several dominant types of mutual funds is much lower for large plans than for smaller plans. And this data shows the fees actually paid, rather than the lowest fees available to a plan. It is unclear what features and quality aspects accompanied the fees.

TABLE 3—AVERAGE EXPENSE RATIOS OF MUTUAL FUNDS IN 401(K) PLANS IN BASIS POINTS, 2015

Plan assets	Domestic equity mutual funds	International equity mutual funds	Domestic bond mutual funds	International bond mutual funds	Target date mutual funds	Balanced mutual funds (non-target date)
$1M–$10M	81	101	72	85	79	80
$10M–$50M	68	85	59	77	68	64

conscious plan sponsors). *See also* Russel Kinnel, ''Mutual Fund Expense Ratio Trends,'' Morningstar, (June 2014), at *https://corporate.morningstar.com/us/documents/researchpapers/fee_trend.pdf* (accessed Aug. 21, 2018) (stating that breakpoints are built into mutual fund management fees so that a fund charges less for each additional dollar managed); Vanguard, ''What You Should Know About Mutual Fund Share Classes and Breakpoints,'' at *http://www.vanguard.com/pdf/v415.pdf* (stating that investors in certain class shares may be eligible for volume discounts if their purchases meet certain investment levels, or breakpoints).

[95] Average expense ratios are expressed in basis points and asset-weighted. The sample includes plans with audited 401(k) filings in the BrightScope database for 2015 and comprises 15,110 plans with $1.4 trillion in mutual fund assets. Plans were included if they had at least $1 million in assets and between 4 and 100 investment options. BrightScope/ICI, ''The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2015'' (March 2018).

TABLE 3—AVERAGE EXPENSE RATIOS OF MUTUAL FUNDS IN 401(K) PLANS IN BASIS POINTS, 2015—Continued

Plan assets	Domestic equity mutual funds	International equity mutual funds	Domestic bond mutual funds	International bond mutual funds	Target date mutual funds	Balanced mutual funds (non-target date)
$50M–$100M	55	72	44	66	54	50
$100M–$250M	52	68	40	64	55	45
$250M–$500M	49	63	36	67	50	42
$500M–$1B	45	60	33	65	50	39
More than $1B	36	52	26	65	48	32

Source: Average expense ratios are expressed in basis points and asset-weighted. The sample includes plans with audited 401(k) filings in the BrightScope database for 2015 and comprises 15,110 plans with $1.4 trillion in mutual fund assets. Plans were included if they had at least $1 million in assets and between 4 and 100 investment options. BrightScope/ICI, ''The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2015'' (March 2018).

There are some important caveats to interpreting Table 3. The first is that it does not include data for most of the smallest plans because plans with fewer than 100 participants generally are not required to submit audited financial statements with their Forms 5500. The second is that there is variation across plans in whether and to what degree the cost of recordkeeping is included in the mutual fund expense ratios paid by participants. In plans where recordkeeping is not entirely included in the expense ratios, it may be paid by employers, as a per-participant fee, or as some combination of these. These caveats mean that the link between fees and size could be either stronger or weaker than Table 3 suggests, creating some uncertainty about how large an advantage MEPs could offer.

An alternative method of comparing potential size advantages is a broader measure called ''total plan cost'' calculated by Brightscope.[96] Total plan cost likely provides a better way to compare costs because, in addition to costs paid in the form of expense ratios, it includes fees reported on the audited Form 5500. It comprises all costs regardless of whether they are paid by the plan, the employer, or the participants. Total plan cost includes recordkeeping services for all plans, for example, which is one reason that it is a more comparable measure than the data presented above in Table 3. When plans invest in mutual funds and similar products, BrightScope uses expense data from Lipper, a financial services firm. When plans invest in collective investment trusts and pooled separate accounts, BrightScope generates an estimate of the investment fees.

Using total plan cost yields generally very similar results about the cost differences facing small and large plans. Table 4 shows that very few of the smaller plans are enjoying the low fees that are commonplace among larger plans.[97]

TABLE 4—LARGER PLANS TEND TO HAVE LOWER FEES OVERALL

Plan assets	Total plan cost (in basis points)		
	10th percentile	Median	90th percentile
$1M–$10M	75	111	162
$10M–$50M	61	91	129
$50M–$100M	37	65	93
$100M–$250M	22	54	74
$250M–$500M	21	48	66
$500M–$1B	21	43	59
More than $1B	14	27	51

Source: Data is plan-weighted. The sample is plans with audited 401(k) filings in the BrightScope database for 2015, which comprises 18,853 plans with $3.2 trillion in assets. Plans were included if they had at least $1 million in assets and between 4 and 100 investment options. BrightScope/ICI, ''The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2015'' (March 2018).

Deloitte Consulting LLP, for the Investment Company Institute, conducted a survey of 361 defined contribution plans. The study calculates an ''all-in'' fee that is comparable across plans. It includes both administrative and investment fees paid by both the plan and the participant. Generally, small plans with 10 participants are paying approximately 50 basis points more than plans with 1,000 participants.[98] Small plans with 10 participants are paying about 90 basis points more than large plans with 50,000 participants. Deloitte predicted these estimates by analyzing the survey results using a regression approach, calculating basis points as a share of assets.

These research findings have shown that small plans and their participants generally pay higher fees than large plans and their participants. Because this rule would give many small employers the opportunity to join a MEP, some of which are very large plans, then many of these employers would likely incur lower fees. Many employers that are not currently offering any retirement plan may join a MEP, leading their employees to save for retirement. Many employers already sponsoring a retirement plan might

[96] *Id.*

[97] *Id.* Data is plan-weighted. The sample is plans with audited 401(k) filings in the BrightScope database for 2015, which comprises 18,853 plans with $3.2 trillion in assets. Plans were included if they had at least $1 million in assets and between 4 and 100 investment options.

[98] Deloitte Consulting and Investment Company Institute, ''Inside the Structure of Defined Contribution/401(k) Plan Fees, 2013: A Study Assessing the Mechanics of the 'All-in' Fee'' (Aug. 2014).

decide to join a MEP instead, seeking lower fees and reduced fiduciary liability exposure. If there indeed are lower fees in the MEPs than in their previous plans, those lower fees could translate into higher savings.

c. Reporting and Audit Cost Savings

The potential for MEPs to enjoy reporting cost savings merits separate attention because this potential is shaped by not only economic forces, but also the reporting requirements applicable to different plans. On the one hand, a MEP, as a single plan, can file a single report and conduct a single audit, while separate plans may be required to file separate reports and conduct separate audits. On the other hand, a MEP, as a large plan, is generally subject to more stringent reporting and audit requirements than a small plan, which likely files no or streamlined reports and undergoes no audits. With respect to reporting and audits then, MEPs sometimes may offer more savings to medium-sized employers (with more than 100 retirement plan participants) already subject to more stringent reporting and audit requirements than to small employers. Small employers that otherwise would have fallen outside of reporting and audit requirements sometimes might incur slightly higher costs by joining MEPs, though this increase is likely to be offset by other sources of MEP savings and by improved security and availability of data that might derive from MEPs' reporting and audits.

Sponsors of ERISA-covered retirement plans generally must file a Form 5500, with all required schedules and attachments annually. The cost burden incurred to satisfy the Form 5500 related reporting requirements varies by plan type, size, and complexity. Analyzing the 2015 Form 5500 filings, the Department estimates that the average cost to file the Form 5500 is as follows: $276 per filer for small (generally less than 100 plan participants) single-employer DC plans eligible for Form 5500–SF; $437 per filer for small single-employer DC plans *not* eligible to file Form 5500–SF; and $1,685 per filer for large (generally 100 participants or more) single-employer DC plans, plus the cost of an audit.

Additional schedules and reporting may be required for large and complex plans. For example, large retirement plans are required to attach auditor's reports with Form 5500. Most small plans are not required to attach such reports.[99] Hiring an auditor and obtaining an audit report can be costly for plans, and audit fees may increase as plans get larger or if plans are more complex. Some recent reports state that the fee to audit a 401(k) plan ranges between $6,500 and $13,000.[100]

If an employer joins a MEP meeting the requirements of the proposal, it can save some costs associated with filing Form 5500 and fulfilling audit requirements because a MEP is considered a single plan. Thus, one Form 5500 and audit report would satisfy the reporting requirements, and each participating employer would not need to file its own, separate Form 5500 and, for large plans or those few small plans that do not meet the small plan audit waiver, an audit report. According to a GAO report, most association MEPs interviewed by the GAO have over 100 participating employers.[101] PEOs also tend to have a large number of client employers, at least 400 participating employers in their PEO-sponsored DC plans.[102] Assuming reporting costs are shared by participating employers within a MEP, an employer joining a MEP can save virtually all the reporting costs discussed above. As PEOs seem to have more participating employers than associations, an employer sometimes might save slightly more by joining a PEO MEP compared to joining a group or association MEP, but the additional savings are minimal.[103] Large plans could enjoy even higher cost savings if audit costs are taken into account. The Department estimates that reporting cost savings associated with Form 5500 and an audit report would be approximately $8,103 per year for a large plan joining an association MEP and $8,165 per year for a large plan joining a PEO MEP.[104]

It is less clear whether the self-employed would experience similar reporting cost savings by joining a MEP. The Department estimates these potential cost savings by comparing the reporting costs of an employer that participates in a MEP rather than sponsoring its own plan. But as discussed earlier, several retirement savings options are already available for self-employed persons, and most have minimal or no reporting requirements. For example, both SEP IRA and SIMPLE IRA plans are available for small employers and the self-employed, and neither option requires Form 5500 filings.[105] Solo 401(k) plans are also available to the self-employed persons, and they may be exempt from Form 5500–EZ reporting requirement if the plans assets are less than $250,000.[106] Thus, if self-employed individuals join a MEP, they would be unlikely to realize reporting costs savings. In fact, it is possible that their reporting costs could slightly increase, because the self-employed would share reporting costs with other MEP participating employers that they otherwise would not incur.

d. Reduced Bonding Costs

The potential for bonding cost savings in MEPs merits separate attention. As noted above, ERISA section 412 and related regulations[107] generally require every fiduciary of an employee benefit plan and every person who handles funds or other property of such plan to be bonded. ERISA's bonding requirements are intended to protect employee benefit plans from risk of loss due to fraud or dishonesty on the part

[99] Under certain circumstances, some small plans may still need to attach auditor's reports. For more details, see *https://www.dol.gov/sites/default/files/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500/2017-instructions.pdf.* In 2015, approximately 3,600 small plans that filed the Form 5500 and not the Form 5500–SF submitted audit reports as part of their Form 5500 filing.

[100] *See https://www.thayerpartnersllc.com/blog/the-hidden-costs-of-a-401k-audit.*

[101] U.S. Government Accountability Office, GAO–12–665, ''Federal Agencies Should Collect Data and Coordinate Oversight of Multiple Employer Plans,'' (Sept. 2012) (*https://www.gao.gov/products/GAO-12-665*).

[102] *Id.*

[103] Cost savings for small single employer DC plans eligible for Form 5500–SF would be $259.51 per filer if it joins an association-sponsored MEP as opposed to $272.15 per filer if it joins a PEO-sponsored MEP; for small single employer DC plans *not* eligible for Form 5500–SF cost savings would be $420.31 per filer if it joins an association-sponsored MEP as opposed to $432.94 per filer if it joins a PEO-sponsored MEP; for large single employer DC plans cost savings would be $1,668.36 per filer if it joins an association-sponsored MEP as opposed to $1,681.00 per filer if it joins a PEO-sponsored MEP.

[104] The Department conservatively estimated these cost savings based on the lower end of the audit fees, $6,500. If the higher end of the fees, $13,000 is assumed, the annual cost savings for large plans (including audit fees and estimated Form 5500 preparation costs) would range from $14,538 per filer to $14,649 per filer.

[105] SEPs that conform to the alternative method of compliance in 29 CFR 2520.104–48 or 2520.104–49 do not have to file a Form 5500; SIMPLEs do not have to file. For more detailed reporting requirements for SEPs and SIMPLE IRAs, see *https://www.irs.gov/pub/irs-tege/forum15_sep_simple_avoiding_pitfalls.pdf; see also https://www.irs.gov/retirement-plans/retirement-plans-for-self-employed-people.*

[106] Sometimes solo 401(k) is called as ''individual 401(k),'' or ''one-participant 401(k)'' or ''uni-401(k).'' For more information about solo-401(k) plans, including reporting requirements, see *https://www.irs.gov/retirement-plans/one-participant-401k-plans.* Because solo 401(k) plans do not cover any common law employees, they are not required to file an annual report under title I of ERISA, but must file a return under the Code. Such plans may be able to file a Form 5500–SF electronically to satisfy the requirement to file a Form 5500–EZ with the IRS.

[107] 29 CFR 2550.412–1 and 29 CFR part 2580.

of persons who handle plan funds or other property, generally referred to as plan officials. A plan official must be bonded for at least 10 percent of the amount of funds he or she handles, subject to a minimum bond amount of $1,000 per plan with respect to which the plan official has handling functions. In most instances, the maximum bond amount that can be required under ERISA with respect to any one plan official is $500,000 per plan; however, the maximum required bond amount is $1,000,000 for plan officials of plans that hold employer securities.[108]

Under the proposed rule, MEPs generally might enjoy lower bonding costs than would an otherwise equivalent collection of smaller, separate plans, for two reasons. First, it might be less expensive to buy one bond covering a large number of individuals who handle plan funds than a large number of bonds covering the same individuals separately or in smaller more numerous groups. Second, the number of people handling plan funds and therefore subject to ERISA's bonding requirement in the context of a MEP may be smaller than in the context of an otherwise equivalent collection of smaller, separate plans.

e. Increased Retirement Savings

The various effects of this rule, if finalized, could lead in aggregate to increased retirement savings. As discussed above, many workers would likely go from not having any access to a retirement plan to having access through a MEP. This has the potential to result in an increase in retirement savings, on average, for this group of workers. While some workers may choose not to participate, surveys indicate that a large number could. For a defined contribution pension plan, about 73 percent of all workers with access take up the plan.[109] Among workers whose salary tends to be in the lowest 10 percent of the salary range, this figure is about 40 percent.[110] One reason that these take-up rates are relatively high is that many plans use automatic enrollment to enroll newly hired workers, as well as, sometimes, existing workers. Automatic enrollment is particularly prevalent among large plans; in 2016 about 75 percent of plans with 1,000–4,999 participants use automatic enrollment, while only about 34 percent of plans with 1–49 participants do.[111]

Some workers may be saving in an IRA, either in an employer-sponsored IRA, payroll deduction IRA, or on their own. If they begin participating in a MEP 401(k), they would have the opportunity to take advantage of higher contribution limits, and some individuals could begin receiving employer contributions when participating in a MEP when they did not previously.

In general, MEPs could offer participants a way to save for retirement with lower fees. In particular, the fees are likely to be lower than in most small plans and in retail IRAs. The savings in fees could result in higher investment returns and thus higher retirement savings.

f. Improved Portability

In an economy where workers may change jobs many times over their career, portability of retirement savings is an important feature that can help workers keep track of their savings, retain tax-qualified status, and gain access to the investment options and fees that they desire. Some plan sponsors are not willing to accept rollovers from other qualified plans, which impedes portability. This is true particularly with respect to small plan sponsors that do not want to confront the administrative burden associated with processing rollovers. On the other hand, most large plans accept rollovers from other qualified plans, and the Department believes that it is reasonable to assume that MEPs meeting the requirements of this proposal also would accept rollovers, because, generally, they would constitute large plans.[112] Moreover, MEPs could facilitate increased portability for employees that leave employment to work for another employer that adopted the same MEP.[113] This might occur when the employers that adopted the MEP are in the same industry or are located in the same geographic area.

g. Increased Labor Market Efficiency

The increased prevalence of MEPs would allow small employers the opportunity to offer retirement benefits that are comparable to what large employers provide. Since employees value retirement benefits, this development would tend to shift talented employees toward small businesses. Such a shift would make small businesses more competitive. The reallocation of talent across different sectors of the economy would increase efficiency.[114]

h. Increased Equality

Increased availability of MEPs also has the potential to increase equality among workers saving for retirement. As noted above, automatic enrollment is particularly common among larger plans, and one study found that from 2007 to 2010, increasing use of automatic enrollment by plan sponsors increased participation in such plans.[115] Indeed, defined contribution pension plan participation dramatically increases when plans have an automatic enrollment feature, which helps bring black and Hispanic participation to similar levels as whites and Asians.[116] For those not subject to automatic enrollment, black and Hispanic participation rates are 13 percentage points and 18 percentage points, respectively, behind white participation.[117] However, for those subject to automatic enrollment, black and Hispanic participation rates are only three percentage points and two percentage points behind white participation.[118] The effect of automatic enrollment on minority participation is even more pronounced for lower salary brackets.[119] It is likely that minority participation rate would similarly increase if MEPs include an automatic enrollment feature like most large retirement plans.

This proposed rule also has the potential to increase equality among men and women in terms of retirement savings. As of 2012, working women are participating in retirement plans at the

[108] *See* DOL Field Assistance Bulletin 2008–04, *https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2008-04.*

[109] These statistics apply to private industry. U.S. Bureau of Labor Statistics, National Compensation Survey, Employee Benefits in the U.S. (March 2018).

[110] *Id.*

[111] Plan Sponsor Council of America, ''60th Annual Survey of Profit Sharing and 401(k) Plans, Reflecting 2016 Plan Year Experience'' (2017), Table 107.

[112] A survey of plan sponsors indicates that in 2016, about 76 percent of 401(k) plans with 1–49 participants accepted rollovers from other plans. Among larger plans, the figure is much higher; for example, approximately 95 percent of plans with 1,000–4,999 participants accept rollovers. The full details are more complex because many 401(k) plans responding yes accept rollover from some sources, such as another 401(k) plan, but not others, such as a defined benefit pension or an IRA.

[113] Paul M. Secunda, ''Uber Retirement,'' Marquette Law School Legal Studies Paper No. 17–1, (Jan. 2017).

[114] John J. Kalamarides, Robert J. Doyle, and Bennett Kleinberg, ''Multiple Employer Plans: Expanding Retirement Savings Opportunities,'' Prudential (Feb. 2017).

[115] The Ariel/Aon Hewitt Study, ''401(k) Plans in Living Color: A Study of 401(k) Savings Disparities Across Racial and Ethnic Groups,'' (April 2012).

[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] *Id.*

same rate as working men,[120] but women are still less prepared for retirement than men due to differences in labor force participation and household production. In addition to having more time out of the labor force on average, women are more likely to work part time, leading to lower savings in DC plans and lower accruals in DB plans. In 2014, among Vanguard's three million participants, the median amount accumulated in defined contribution pension plan accounts was $36,875 for men and $24,446 for women. For defined benefit pension plans in 2010, men received $17,856 in median income, whereas women received $12,000. For individuals that are 65 and older, women have a median household income that is 26 percent less income than that for men.[121] This proposed rule could help women in the workforce increase saving for retirement because of increased access and portability, especially to the degree that there would be benefits for part-time workers and self-employed workers.

The Code generally gives tax advantages to certain retirement savings over most other forms of savings.[122] Consequently, all else being equal, a worker who is saving money in tax-qualified retirement savings vehicle generally can enjoy higher lifetime consumption and wealth than one who does not. The magnitude of the relative advantage generally depends on the worker's tax bracket, the amount contributed to the plan, the timing of contributions and withdrawals, and the investment performance of the assets in the account. Workers that do not contribute to a qualified retirement savings vehicle due to lack of access to a workplace retirement plan do not reap this relative advantage. This proposed rule would likely increase the number of American workers with access to a tax-qualified workplace retirement plan, which would spread this financial advantage to some people who are not currently receiving it.

i. Improved Data Collection

This proposed rule also has the potential to improve the Department's data collection for purposes of its ERISA enforcement. As noted above, the expansion of MEPs is likely to lead to some employers who previously filed their own Form 5500s [123] to join a MEP that files a single Form 5500 on behalf of its participating employers. Since MEPs are usually large plans, they will likely have a much more detailed filing with associated schedules and an audit report. This filing will tend to be higher quality, more accurate data than the Department currently receives when a collection of participating employers are filing as single-employer plans. That is both because the required filing for plans with more than 100 participants requires more detail and because participating employers would start being part of an audit when they were not audited previously. This audit would add a layer of review that may help to prevent fraud and abuse. And on the whole, the proposal would both lead to more robust data collection for the Department to undertake its research, oversight, and enforcement responsibilities under ERISA.

The Department also believes that this proposal would improve the quality of information collected. The Department has encountered instances of separate Form 5500 filings that fail to account properly for each participating employer's plan financial and demographic information on a granular enough level for accurate reporting of each participating employer's proper proportion of the MEP as a whole. The Department also has at times received almost identical filings for each participating employer within a MEP. This duplication can lead to an overstatement or understatement of participant counts, amount of assets, amount of fees, and other important financial and demographic data for single employer plans and a failure to be able to assess the statistics of all MEPs. The Department continually strives to detect and correct filing errors and to improve filing instructions. Nonetheless, data quality could be improved insofar as MEPs meeting the requirements of the proposal would be likely to possess the expertise to file Form 5500 correctly. Moreover, it might require fewer resources for the Department to detect and correct filing errors among a relatively small number of reports filed by large MEPs than among a far larger number of reports filed by separate small plans.

6. Costs

The proposed rule would not impose any direct costs because it merely clarifies which persons may act as an ''employer'' within the meaning of section 3(5) of ERISA in sponsoring a MEP. The rule imposes no mandates but rather is permissive relative to baseline conditions. Concerns have been expressed, however, that MEPs could be vulnerable to abuse, such as fraud, mishandling of plan assets or charging excessive fees. Abuses might result from the fact that employers are not directly overseeing the plan. For example, employers acting as plan sponsors of single-employer plans can be effective fiduciaries as they have incentives to protect their plans. In the case of a MEP, however, an adopting employer will have limited fiduciary duties and may assume other participating employers are more thoroughly policing the plan. In fact, GAO found that some MEPs' marketing materials, and even MEP representatives, mislead employers about fiduciary responsibilities with claims that joining a MEP removes their fiduciary responsibility entirely.[124] Less monitoring provides an environment where abuses can occur. On the other hand, having multiple participating employers monitoring a MEP plan sponsor may actually lead to heightened protections for the collective.

MEPs have the potential to build up a substantial amount of assets quickly, particularly where employers that already offer plans join MEPs and transfer existing retirement assets to the MEP, thus making them a target for fraud and abuse. Because the assets are used to fund future retirement distributions, such fraudulent schemes could be hidden or difficult to detect for a long period. A 2012 GAO report regarding federal oversight of data and coordination of MEPs discusses potential abuses by MEPs, such as

[120] The authors' estimates are based on analysis of the Survey of Income and Program Participation using interviews that were conducted in 2012. Jennifer Erin Brown, Nari Rhee, Joelle Saad-Lessler, and Diane Oakley, ''Shortchanged in Retirement: Continuing Challenges to Women's Financial Future,'' National Institute on Retirement Security, (March 2016).

[121] Household income is the sum of income from all sources including wages, Social Security, defined benefit pensions, withdrawals from defined contribution accounts and IRAs, and other. *Id.*

[122] But for the special tax status of retirement contributions and investments, employer contributions to pension plans and income earned on pension assets generally would be taxable to employees as the contributions are made and as the income is earned, and employees would not receive any deduction or exclusion for their pension contributions. Currently under the Code, employer contributions to qualified pension plans and, generally, employee contributions made at the election of the employee through salary reduction are not taxed until distributed to the employee, and income earned on pension assets is not taxed until distributed. The tax expenditure for ''net exclusion of pension contributions and earnings'' is computed as the income taxes forgone on current tax-excluded pension contributions and earnings less the income taxes paid on current pension distributions.

[123] Although the individual participating employers are filing their own Forms 5500 (or Forms 5500–SF), the entity may be providing Form 5500 preparation and filing services for all the participating employers and be acting as a ''batch submitter'' and otherwise taking advantage of certain economies of scale.

[124] U.S. Government Accountability Office, GAO, 12–665, ''Private Sector Pensions—Federal Agencies Should Collect Data and Coordinate Oversight of Multiple Employer Plans,'' (Sept. 2012) (*https://www.gao.gov/products/GAO-12-665*).

charging excessive fees or mishandling plan assets.[125] If MEPs are at greater risk for fraud and abuse than single-employer plans, and some employers who are currently sponsoring single-employer retirement plans decide to join a MEP instead, that could put more participants and their assets at greater risk of fraud and abuse. But single-employer DC plans are also vulnerable to these abuses and to mismanagement, and some MEPs may be more secure than some otherwise separate small plans. The Department is not aware of any direct information indicating whether the risk for fraud and abuse is greater in the MEP context than in other plans. Many small employers have relationships based on trust with trade associations that may sponsor MEPs under the proposal, and those associations have an interest in maintaining these trust relationships by ensuring that fraud does not occur in MEPs they sponsor. Nevertheless, employers choosing to begin and continue participating in a MEP should ensure that the MEP is sponsored and operated by high quality, reputable providers.

The Department does not have a basis to believe that there will be increased risk of fraud and abuse due to the proposed rule's provisions with respect to PEOs. As stated earlier in the preamble, a PEO's assumption and performance of substantial employment functions on behalf of its client employers is a lynchpin of the proposal. Requiring the PEO to provide employment functions mitigates to some extent fraud concerns because the PEO will be a fiduciary and bear all of the responsibilities associated with that. The Department believes this proposal mitigates fraud concerns associated with the expansion of PEO-sponsored plans.

Moreover, the proposal provides a safe harbor for certain ''certified professional employer organization'' (CPEO) within the meaning of section 7705 of the Code and regulations thereunder. Generally, a CPEO is a PEO that demonstrates a specified level of structural and financial integrity under federal tax law. To become and remain a CPEO, the PEO must satisfy certain requirements as to its federal employment tax compliance and as to the status of its positive working capital, have certain background and experience in functioning as a PEO, be organized and have a physical business location within the United States, report its annual audited financials to the IRS, and meet bonding and other requirements described in the CPEO statute and regulations including independent auditing and related attestation requirements. Employers may consider these attributes when evaluating retirement options because they may reduce the potential for fraud, abuse, and mismanagement when PEOs perform employment functions on behalf of client employers.

7. Transfers

Several transfers are possible as a result of this proposed rule. To the extent the expansion of MEPs leads employers that previously sponsored other types of retirement plans to terminate or freeze these plans and adopt a MEP, there may be a transfer between the employer and the employees, although the direction of the transfer is unclear. Additionally, if employers terminate or freeze other plans to enroll in a MEP, and if that MEP utilizes different service providers and asset types than the terminated plan, those different service providers would experience gains or losses of income or market share. Service providers that specialize in providing services to MEPs might benefit at the expense of other providers who specialize in providing services to small plans.

The proposed rule could also result in asset transfers if MEPs invest in different types of assets. For example, small plans tend to rely more on mutual funds, while larger plans have greater access to other types of investment vehicles such as bank common collective trusts and insurance company pooled separate accounts, which allow for specialization and plan specific fees. This movement of assets could see profits move from mutual funds to other types of investment managers.

Finally, the Code provides substantial tax preferences for retirement savings. If access to retirement plans and savings increase as a result of this proposed rule, a transfer will occur flowing from all taxpayers to those individuals receiving tax preferences as a result of new and increased retirement savings.

8. Impact on the Federal Budget

The effects of the proposed rule on the federal budget are uncertain. Because the proposed rule would increase access to retirement plans, tax revenues would be reduced in the short run due to the tax deferral associated with an increase in retirement savings. But the amount of the reduction would depend upon how many more dollars would be invested in retirement plans receiving traditional tax treatment rather than after-tax Roth treatment. And it is unclear to what degree people would consume less to save more, or alternatively offset their new savings by going into debt or by reducing savings in non-retirement accounts or future retirement savings. Consequently, the long run net change in consumption and investment and effect on the federal budget is uncertain.

9. Uncertainty

As discussed above, the Department expects this proposed rule would expand workers' access to employment-based retirement plans by easing the burden of offering retirement benefits for employers—particularly small employers. However, the exact extent to which access to employment-based retirement plans would increase under this proposed rule is uncertain.

Several reports suggest that, although important, employers may not consider offering retirement plans a priority as compared to other types of benefits. The most commonly offered benefit is paid leave, followed by health insurance; retirement plans rank third.[126] This order holds true for small employers, as well.[127] Another survey of employers confirms that small employers offer health insurance more often than retirement plans.[128] That study also suggests that company earnings and the number of employees affect the decision whether or not to offer retirement plans: Employers that experience increases in earnings or the number of employees are more likely to offer retirement plans.[129] The top reason provided for employers to start offering a retirement plan is the increase in business profits.[130] Similarly, in another survey, employers not offering retirement plans cite ''the company is not big enough'' most frequently as the reason why they do not offer retirement plans.[131] Although this rule would make it easier and less costly for employers to offer a workplace retirement savings vehicle, these surveys suggest that small employers are not likely to adopt a MEP unless their business is in a strong financial position and generating sufficient revenue streams. Also, it can

[125] *Id.*

[126] Board of Governors of the Federal Reserve System, ''Report on the Economic Well-Being of U.S. Households in 2017'' (May 2018).

[127] The Pew Charitable Trusts, ''Employer Barriers to and Motivations for Offering Retirement Benefits,'' 2017.

[128] Transamerica Center for Retirement Studies, ''All About Retirement: An Employer Survey, 17th Annual Transamerica Retirement Survey'' (Aug. 2017).

[129] The Pew Charitable Trusts, ''Employer Barriers to and Motivations for Offering Retirement Benefits,'' 2017.

[130] *Id.*

[131] Transamerica Center for Retirement Studies, ''All About Retirement,'' 2017.

be quite challenging for a small employer or self-employed individual to determine which plan is most appropriate. Business owners must understand the characteristics and features of the available options in order to choose the most suitable plan. A discussion of some of these options and their features follows:

SEP: Simplified Employee Pensions can be established by sole proprietors, partnerships, and corporations to provide retirement plan coverage to employees. SEPs must be offered to all employees who are at least 21 years old, were employed by the employer in three out of the last five years, and received compensation for the year ($600 for 2018).

SEPs are completely employer funded and they cannot accept employee contributions.[132] Each year the employer can set the level of contributions it wants to make, if any. The employer usually makes a contribution to each eligible employee's SEP–IRA that is equal to the same percentage of salary for each employee. The annual per-participant contribution cannot exceed the lesser of 25 percent of compensation or $55,000 in 2018.

Participants can withdraw funds from their SEP–IRA at any time subject to federal income taxes, and possibly a 10 percent additional tax on early distributions, if the participant is under age 59½. Participants cannot take loans from their SEP–IRAs.

Generally, these plans are easy to set up; the business owner may use IRS Form 5305–SEP to establish the plan, and in some circumstance there are no set-up fees or annual maintenance charges. SEPs normally do not have to file a Form 5500.

SIMPLE IRA Plan: The Savings Incentive Match Plan for Employees of Small Employers allows businesses with fewer than 100 employees to establish an IRA for each employee. The employer must make the plan available to all employees who received compensation of at least $5,000 in any prior two years and are reasonably expected to earn at least $5,000 in the current year. In 2018, employees are allowed to make salary deferral contributions up to the lesser of 100 percent of compensation or $12,500. Employees 50 or older may also make additional (''catch-up'') contributions of up to $3,000. The employer also must make either a matching contribution dollar-for-dollar for employee contributions up to three percent of compensation, or a non-elective contribution set at two percent of compensation.

Participants can withdraw funds from their SIMPLE–IRA at any time subject to federal income taxes. A 25 percent additional tax may apply to withdrawals occurring within two years of commencing participation, if the participant is under age 59½. A 10 percent additional tax may apply after the two-year period, if the participant is under age 59½. Participants cannot take loans from their SIMPLE IRAs.

Similar to SEPs, SIMPLE IRA plans are easy to set up and have few administrative burdens. The employer may use IRS Form 5304–SIMPLE or 5305–SIMPLE to set up the plan, and there is no annual filing requirement for the employer. Banks or other financial institutions handle most of the paperwork. Similar to SEPs, some companies offer to set up SIMPLE IRAs with no set-up fees or annual maintenance charges.

Payroll Deduction IRAs: An easy way for small employers to provide their employees with an opportunity to save for retirement is by establishing payroll deduction IRAs. Many people not covered by a workplace retirement plan could save through an IRA, but do not do so on their own. A payroll deduction IRA at work can simplify the process and encourage employees to get started. The employer sets up the payroll deduction IRA program with a bank, insurance company or other financial institution. Then each employee chooses whether to participate and if so, the amount of payroll deduction for contribution to the IRA. Employees are always 100 percent vested in (have ownership in) all the funds in their IRAs. Participant loans are not permitted. Withdrawals are permitted anytime, but they are subject to income tax (except for certain distributions from nondeductible IRAs and Roth IRAs). An additional 10 percent additional tax may be imposed if the employee is under age 59½.

Employees' contributions are limited to $5,500 for 2018. Additional ''catch-up'' contributions of $1,000 per year are permitted for employees age 50 or over. Employees control where their money is invested and also bear the investment risk.

Payroll deduction IRAs are not covered by ERISA if:

- No contributions are made by the employer;
- Participation is completely voluntary for employees;
- The employer's sole involvement in the program is to permit the IRA provider to publicize the program to employees without endorsement, to collect contributions through payroll deductions, and to remit them to the IRA provider; and
- The employer receives no consideration in the form of cash or otherwise, other than reasonable compensation for services actually rendered in connection with payroll deductions.[133]

Solo 401(k): Self-employed individuals with no employees other than themselves and their spouses may establish a self-employed 401(k), colloquially referred to as a solo 401(k). As an employee, a self-employed individual may make salary deferrals up to the lesser of 100 percent of compensation or $18,500 in 2018.[134] They also can make nonelective contributions up to 25% of compensation provided that, when added to any salary deferrals, the total contribution does not exceed the lesser of 100 percent of a participant's compensation or $55,000 [135] (for 2018). In addition, those aged 50 or older can make additional (''catch-up'') contributions of $6,000.

Withdrawals are permitted only upon the occurrence of a specified event (retirement, plan termination, etc.), and they are subject to federal income taxes and possibly a 10 percent additional tax if the participant is under age 59½. The plan may permit loans and hardship withdrawals.

Solo 401(k) plans are more administratively burdensome than other types of plans available to small employers. A model form is not available to establish the plan. A Form 5500 must be filed when plan assets exceed $250,000.

Credit for Pension Start-Up Costs: A tax credit is available for small employers to claim part of the ordinary and necessary costs to start a SEP, SIMPLE IRA, or 401(k) plan. To be eligible for the credit, an employer must have had no more than 100 employees who received at least $5,000 of compensation from the employer during the tax year preceding the first credit year. The credit is limited to 50 percent of the qualified cost to set up and administer the plan, up to a maximum of $500 per year for each of the first three years of the plan.

Saver's Credit: A nonrefundable tax credit for certain low- and moderate-income individuals (including self-employed) who contribute to their plans also is available (''Saver's Credit''). The

[132] This rule does not apply to a SEP in effect on December 31, 1996, if the SEP provided for pre-tax employee contributions (commonly referred to as a SARSEP) as of that date.

[133] 29 CFR 2510.3–2(d).

[134] IRC section 402(g).

[135] IRC section 415(c).

amount of the Saver's Credit is 50 percent, 20 percent, or 10 percent of the participant's contribution to an IRA or an employer-sponsored retirement plan such as a 401(k) depending on the individual's adjusted gross income (reported on Form 1040 series return). The maximum credit amount is $2,000 ($4,000 if married filing jointly).

Comparison of Options: The options discussed above may better serve an employer's needs than a MEP would in some circumstances. Some companies offer to set up solo 401(k) plans with no set-up fees.[136] Despite these currently available options for self-employed workers, about 94 percent of self-employed (not wage and salary workers) did not participate in retirement plans in 2013.[137] Although these low levels of take-up with these other options create some uncertainty that this proposed rule would persuade many self-employed individuals to join a MEP, this uncertainty alone is no basis to ignore MEPs as a possible solution to a stronger retirement for America's workers.

SEP and SIMPLE IRA plans, for example, could meet the needs of many small employers. As discussed above, they are easy to set up and have low start-up and administration costs. Furthermore, small employers can claim tax credits for part of the costs of starting up SEP or SIMPLE IRA plans and certain employees may take advantage of the Saver's Credit. Despite these advantageous features, these plans did not gain much traction in the market, and the effect of MEPs is uncertain. This line of reasoning suggests that increased access to MEPs may only have modest success in increasing retirement coverage.

In addition to these plan options, there are other ways that existing small employers can offer retirement plans at low costs. For micro plans with assets less than $5 million, employers can use providers of bundled financial services that include both payroll and recordkeeping services on their 401(k) products. In 2016, about 69 percent of plans with less than $1 million in assets used these bundled providers.[138] Given that multiple low-cost options already exist for small employers, it is unclear to what degree small employers and their workers would benefit from also having the option to join various MEPs.

Although this rule would ease the burden of employers, particularly small employers, in offering retirement plans for their workers, it is uncertain how many more employers would offer retirement plans to their workers because of this proposed rule and how many more employees would chose to participate in those retirement plans. To begin, workers employed by small employers not offering retirement plans tend to be younger workers, lower-paid workers, part-time workers, or immigrants,[139] characteristics that at least one survey suggests reduce the lack of demand for retirement benefits.[140] Indeed, one study found that large employers not sponsoring retirement plans tended to have similar characteristics among their employees: Higher proportions of part-time or part-year employees, younger employees, employees with lower earnings, and employees with less education. Another study found that the unobservable factors influencing the decision to be self-employed were also likely to decrease participation in retirement plans.[141] This implies the low sponsorship rate at small firms could be due more to differences in demand for retirement benefits by employees than to the higher per-employee administration costs.[142]

Another factor influencing employee participation in retirement savings plans is employers' matching contributions,[143] which this rule would not directly affect. While most small plan sponsors offer matching contributions, small plan sponsors are a little less likely to offer matching contributions than large plan sponsors.[144] It is difficult to anticipate how many small employers would join a MEP, whether they would offer matching contributions, and whether and how those contributions would differ from those offered previously.

Several additional factors may influence employer participation in expanded or newly established MEPs. For large employers, even though the potential cost savings associated with filing Form 5500s and audit reports discussed earlier can be substantial, the savings may not be large enough to persuade them to join a MEP. Switching from an existing well-established plan to a MEP could be a difficult and costly procedure in the short term. Furthermore, some employers may be hesitant to join a MEP due to the unified plan rule,[145] colloquially referred to as the ''one bad apple'' rule. Under the unified plan rule, the qualification of a MEP is determined with respect to all employers maintaining the MEP. Consequently, the failure by one employer maintaining the plan (or by the plan itself) to satisfy an applicable qualification requirement will result in the disqualification of the section 413(c) plan for all employers maintaining the plan. In addition to the directives to the Secretary of Labor, described earlier, the Executive Order directs the Secretary of the Treasury to consider proposing amendments to regulations or other guidance regarding the circumstances in which a MEP may satisfy the tax qualification requirements, including the consequences if one or more employers that sponsored or adopted the plan fails to take one or more actions necessary to meet those requirements.[146]

In sum, there are many challenges and inherent uncertainties associated with efforts to expand the coverage of retirement plans, but this proposed rule would provide another opportunity for small employers and the self-employed to adopt a retirement savings plan. By reducing some of the burdens associated with setting up and administering retirement plans, this proposed rule could lower costs and encourage employers, particularly small employers, to establish a retirement savings plan for their workers.

[136] Kerry Hannon, ''The Best Retirement Plans for the Self-Employed.'' *Forbes,* (April 1, 2011).

[137] Copeland, ''Employment-Based Retirement Plan Participation, 2013.''

[138] Cerulli Associates, *U.S. Retirement Markets 2016.* (available at *https://www.cerulli.com/vapi/public/getcerullifile?filecid=Cerulli-US-Retirement-Markets-2016-Information-Packet*).

[139] Copeland, ''*Employment-Based Retirement Plan Participation,* 2013.'' Constantijn W.A. Panis & Michael J. Brien ''Target Populations of State-Level Automatic IRA Initiatives,'' (August 28, 2015) (*available at https://www.dol.gov/sites/default/files/ebsa/researchers/analysis/retirement/target-populations-of-state-level-automatic-ira-initiatives.pdf*).

[140] The Pew Charitable Trusts, ''Employer Barriers to and Motivations for Offering Retirement Benefits,'' 2017.

[141] Sharon A. Devaney and Yi-Wen Chien, ''Participation in Retirement Plans: A Comparison of the Self-employed and Wage and Salary Workers,'' *Compensation and Working Conditions,* (Winter 2000) (*available at https://www.bls.gov/opub/mlr/cwc/participation-in-retirement-plans-a-comparison-of-the-self-employed-and-wage-and-salary-workers.pdf*).

[142] Peter Brady and Michael Bogdan, ''Who Gets Retirement Plans and Why: An Update,'' *ICI Research Perspective,* vol. 17, No. 3 (March 2011).

[143] Cerulli Associates, *U.S. Evolution of the Retirement Investor 2017* (available at *https://www.cerulli.com/vapi/public/getcerullifile?filecid=Cerulli-2017-US-Evolution-of-the-Retirement-Investor-Information-Packet*).

[144] Transamerica's employer survey found that the share of small plan sponsors offering matching contributions was 77 percent compared with 84 percent for large plan sponsors. Transamerica Center for Retirement Studies, ''All about Retirement,'' 2017). Plan Sponsor Council of America, ''60th Annual Survey of Profit Sharing and 401(k) Plans Reflecting 2016 Plan Year Experience,'' 2017.

[145] Treas. Reg. § 1.413–2(a)(3)(iv).

[146] The Department of the Treasury and the IRS have informed the Department that they are actively considering matters relating to the Executive Order, including whether additional regulatory or other guidance would be beneficial.

10. Regulatory Alternatives

As required by E.O. 12866, the Department considered various alternative approaches in developing this proposed rule, which are discussed below.

Covering Other Types of MEPS: The Executive Order on Strengthening Retirement Security in America called on the Department to consider whether businesses or organizations other than groups or associations of employers and PEOs should be able to sponsor a MEP by acting indirectly in the interest of participating employers in relation to the plan within the meaning of section 3(5) of ERISA. The Department is aware of two other types or categories of MEPs not specifically addressed in the proposed rule.[147] The first category includes so-called ''corporate MEPs,'' which are plans that cover employees of related employers, such as affiliates and subsidiary companies, but that are not in the same controlled group, within the meaning of section 414(b) and (c) of the Code. The second category consists of ''open MEPs,'' which are pension plans that cover employees of employers with no relationship other than their joint participation in the MEP, which often are referred to as ''pooled employer plans.'' MEPs pool the assets of unrelated employers to pay the benefits and cover costs. The Department considered, but decided not to include such categories of MEPs in the proposal because they implicate different policy concerns. Nevertheless, consistent with the Executive Order, in Section E above in this preamble, the Department specifically solicits public comments on whether it should address one or more of these other categories of MEPs, by regulation or other means. It also solicits comments on whether the rule should apply to types of pension plans other than defined contribution pension plans.

PEO Safe Harbor: The proposal contains two regulatory safe harbors for PEOs to determine whether they will be considered to perform substantial employment functions on behalf of its client-employers. The first safe harbor provides that a PEO will satisfy the requirement if, among other things, it is a CPEO and meets at least two criteria in the list in paragraph (c)(2)(ii)(D) through (I) of the proposal. The second safe harbor is for PEOs that do not satisfy the CPEO safe harbor but meet five or more criteria from the list in paragraph (c)(2)(ii) of the proposal. In considering possible alternatives, the Department considered requiring PEOs to satisfy additional criteria listed in paragraph (c)(2)(ii) of the proposal. Additionally, the Department considered requiring PEOs to satisfy fewer criteria listed in paragraph (c)(2)(ii) of the proposal. Ultimately, for this proposal, the Department chose five as the number of criteria because the covered PEOs then must meet at least half of the relevant criteria. The Department is of the view that meeting at least half of the listed criteria demonstrates convincingly that the PEO is performing substantial employment functions and ensures that PEOs that satisfy the safe harbor provision do not represent borderline cases under the employer definition in section 3(5) of ERISA.

Working Owner Definition: The proposed definition of working owner would require that a person must work a certain number of hours (*i.e.,* 20 hours per week or 80 hours per month) or have wages or self-employment income above a certain level (*i.e.,* wages or income must equal or exceed the working owner's cost of coverage to participate in the group or association's health plan if the individual is participating in that plan). In considering possible alternatives, the Department considered relying only the hours worked threshold. However, the Department chose the formulation in this proposal (*i.e.,* allowing either the hours worked threshold or the income level threshold), because it best clarified when a working owner could join a group or association retirement plan and paralleled the working owner definition from the AHP Rule.

11. Paperwork Reduction Act

The proposed rule is not subject to the requirements of the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3501 *et seq.*) because it does not contain a collection of information as defined in 44 U.S.C. 3502(3).

12. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rule. The Department has determined that this proposed rule, which would clarify the persons that may act as an ''employer'' within the meaning of section 3(5) of ERISA in sponsoring a MEP, is likely to have a significant impact on a substantial number of small entities. Therefore, the Department provides its IRFA of the proposed rule, below.

a. Need for and Objectives of the Rule

As discussed earlier in this preamble, the proposed rule is necessary to expand access to MEPs, which could enable groups of private-sector employers to participate in a collective retirement plan. MEPs meeting the requirements of the proposed rule could be an efficient way to reduce costs and complexity associated with establishing and maintaining defined contribution plans, which could encourage more plan formation and broader availability of more affordable workplace retirement savings plans, especially among small employers and certain working owners. Thus, the Department intends and expects that the proposed rule would deliver benefits primarily to the employees of many small businesses and their families including many working owners, as well as, many small businesses themselves.

b. Affected Small Entities

The Small Business Administration estimates that 99.9 percent of employer firms meet its definition of a small business.[148] The applicability of these proposed rules does not depend on the size of the firm as defined by the Small Business Administration. Small businesses, including sole proprietors, can join MEPs as long as they are eligible to do so and the MEP sponsor meets the requirements of the proposed rule. The Department believes that the smallest firms, those with less than 50 employees, are most likely to benefit from the savings and increased choice derived from the expanded MEPs coverage under the proposed rule. Section D.4, the ''Affected Entities'' section, above discusses which firms currently are covered by MEPs. These same types of firms, which are disproportionately small businesses, are

[147] A 2012 GAO report separated MEPs into four categories. U.S. Government Accountability Office, GAO, ''12–665, ''Private Sector Pensions—Federal Agencies Should Collect Data and Coordinate Oversight of Multiple Employer Plans,'' (Sept. 2012).

[148] The Small Business Administration, Office of Advocacy, 2018 Small Business Profile. *https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf.* Lasted Accessed 10/03/2018. The SBA also reports that there are 5,881,267 business with between 1–499 employees. These firms are able to enroll in MEPs if they are eligible.

more likely to be covered in the future under this proposal. Approximately 8 million self-employed workers between ages 21 and 70, representing six percent of all similarly aged workers, have no employees and usually work at least 20 hours per week. These self-employed workers would become eligible to join MEPs under the proposal.[149]

c. Impact of the Rule

As stated above, by expanding MEPs, this proposed rule could provide a more affordable option for retirement savings coverage for many small businesses, thereby potentially yielding economic benefits for participating small businesses and their employees. Some advantages of an ERISA-covered retirement plan (including MEPs, SEP–IRAs, and SIMPLE IRAs) over IRA-based savings options outside the workplace include: (1) Higher contribution limits; (2) potentially lower investment management fees, especially in larger plans; (3) a well-established uniform regulatory structure with important consumer protections, including fiduciary obligations, recordkeeping and disclosure requirements, legal accountability provisions, and spousal protections; (4) automatic enrollment; and (5) stronger protections from creditors. At the same time, they provide employers with choice among plan features and the flexibility to tailor retirement plans that meet their business and employment needs.

There are no new record keeping or reporting requirements for compliance with the rule and, in fact, the recordkeeping and reporting requirements could decrease for some small employers under the proposal. If an employer joins a MEP meeting the requirements of the proposal, it can save some costs associated with filing Form 5500 and fulfilling audit requirements because a MEP is considered a single plan. Thus, one Form 5500 and audit report would satisfy the reporting requirements, and each participating employer would not need to file its own, separate Form 5500 and, for large plans or those few small plans that do not meet the small plan audit waiver, an audit report. These reports are normally prepared by a combination of legal professionals, human resource professionals and accountants.

The Department considered several alternatives such as whether to cover other types of MEPs and it developing its formulation of the PEO Safe Harbor and Working Owner definition. The ''Regulatory Alternatives'' section of the RIA above discusses these significant regulatory alternatives considered by the Department in more detail.

d. Duplicate, Overlapping, or Relevant Federal Rules

The proposed rule would not conflict with any relevant federal rules. As discussed above, the proposed rule would merely broaden the conditions under which the Department will view a group or association as acting as an ''employer'' under ERISA for purposes of offering a MEP, and make clear the conditions for PEO sponsorship. As such, the proposed criteria could also result in more MEPs being treated consistently under the Code and title I of ERISA, including MEPs administered by PEOs for the benefit of the employees of their client employers, as described in Rev. Proc. 2002–21.

13. Congressional Review Act

The proposed rule is subject to the Congressional Review Act (CRA) provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to Congress and the Comptroller General for review. The proposed rule is a ''major rule'' as that term is defined in 5 U.S.C. 804(2), because it is likely to result in an annual effect on the economy of $100 million or more.

14. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each federal agency to prepare a written statement assessing the effects of any federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. For purposes of the Unfunded Mandates Reform Act, as well as Executive Order 12875, this proposal does not include any federal mandate that the Department expects would result in such expenditures by State, local, or tribal governments, or the private sector. This is because the proposal merely clarifies which persons may act as an ''employer'' within the meaning of section 3(5) of ERISA in sponsoring a MEP and does not require any action or impose any requirement on the public sector or states.

15. Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism. E.O. 13132 requires federal agencies to follow specific criteria in forming and implementing policies that have ''substantial direct effects'' on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the final rule.

In the Department's view, these proposed regulations would not have federalism implications because they would have not have a direct effect on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.

The Department welcomes input from affected States and other interested parties regarding this assessment.

16. Executive Order 13771 Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. This proposed rule is expected to be an E.O. 13771 deregulatory action, because it would provide critical guidance that would expand small businesses' access to high quality retirement plans at lower costs than would otherwise be available, by removing certain Department-imposed restrictions on the establishment and maintenance of MEPs under ERISA.

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Pensions.

For the reasons stated in the preamble, the Department of Labor proposes to amend 29 CFR part 2510 as follows:

PART 2510—DEFINITIONS OF TERMS USED IN SUBCHAPTERS C, D, E, F, G, AND L OF THIS CHAPTER

■ 1. The authority citation for part 2510 is revised to read as follows:

Authority: 29 U.S.C. 1002(1), 1002(2), 1002(3), 1002(5), 1002(16), 1002(21), 1002(37), 1002(38), 1002(40), 1002(42), 1031, and 1135; Secretary of Labor's Order No. 1–2011, 77 FR 1088 (Jan. 9, 2012); Sec. 2510.3–101 and 2510.3–102 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. At 237 (2012), (E.O. 12108, 44 FR 1065 (Jan. 3, 1979) and 29 U.S.C. 1135 note. Sec. 2510.3–38 is also issued under sec. 1, Pub. L. 105–72, 111 Stat. 1457 (1997).

[149] DOL tabulations of the June 2018 Current Population Survey basic monthly data.

■ 2. Section 2510.3–3 is amended by revising paragraph (c) introductory text to read as follows:

§ 2510.3–3 Employee benefit plan.

* * * * *

(c) *Employees.* For purposes of this section and except as provided in § 2510.3–5(e) and § 2510.3–55(d):

* * * * *

■ 3. Revise the heading for § 2510.3–5 to read as follows:

§ 2510.3–5 Definition of Employer—Association Health Plans.

* * * * *

■ 4. Add § 2510.3–55 to read as follows:

§ 2510.3–55 Definition of Employer—Association Retirement Plans and Other Multiple Employer Pension Benefit Plans.

(a) *In general.* The purpose of this section is to clarify which persons may act as an ''employer'' within the meaning of section 3(5) of the Act in sponsoring a multiple employer defined contribution pension plan (hereinafter ''MEP''). The Act defines the term ''employee pension benefit plan'' in section 3(2), in relevant part, as any plan, fund, or program established or maintained by an employer, employee organization, or by both an employer and an employee organization, to the extent by its express terms or as a result of surrounding circumstances such plan, fund, or program provides retirement income to employees or results in a deferral of income by employees for periods extending to the termination of covered employment or beyond. For purposes of being able to establish and maintain an employee pension benefit plan within the meaning of section 3(2), an ''employer'' under section 3(5) of the Act includes any person acting directly as an employer, or any person acting indirectly in the interest of an employer in relation to an employee benefit plan. A group or association of employers is specifically identified in section 3(5) of the Act as a person able to act directly or indirectly in the interest of an employer, including for purposes of establishing or maintaining an employee benefit plan. A bona fide group or association of employers (as defined in paragraph (b) of this section) and a bona fide professional employer organization (as described in paragraph (c) of this section) shall be deemed to be able to act in the interest of an employer within the meaning of section 3(5) of the Act by satisfying the criteria set forth in paragraphs (b) and (c) of this section, respectively.

(b)(1) *Bona fide group or association of employers.* For purposes of title I of the Act and this chapter, a bona fide group or association of employers capable of establishing a MEP shall include a group or association of employers that meets the following requirements:

(i) The primary purpose of the group or association may be to offer and provide MEP coverage to its employer members and their employees; however, the group or association also must have at least one substantial business purpose unrelated to offering and providing MEP coverage or other employee benefits to its employer members and their employees. For purposes of satisfying the standard of this paragraph (b)(1)(i), as a safe harbor, a substantial business purpose is considered to exist if the group or association would be a viable entity in the absence of sponsoring an employee benefit plan. For purposes of this paragraph (b)(1)(i), a business purpose includes promoting common business interests of its members or the common economic interests in a given trade or employer community and is not required to be a for-profit activity;

(ii) Each employer member of the group or association participating in the plan is a person acting directly as an employer of at least one employee who is a participant covered under the plan;

(iii) The group or association has a formal organizational structure with a governing body and has by-laws or other similar indications of formality;

(iv) The functions and activities of the group or association are controlled by its employer members, and the group's or association's employer members that participate in the plan control the plan. Control must be present both in form and in substance;

(v) The employer members have a commonality of interest as described in paragraph (b)(2) of this section;

(vi) The group or association does not make plan participation through the association available other than to employees and former employees of employer members, and their beneficiaries; and

(vii) The group or association is not a bank or trust company, insurance issuer, broker-dealer, or other similar financial services firm (including pension record keepers and third-party administrators), or owned or controlled by such an entity or any subsidiary or affiliate of such an entity, other than to the extent such an entity, subsidiary or affiliate participates in the group or association in its capacity as an employer member of the group or association.

(2) *Commonality of interest.* (i) Employer members of a group or association will be treated as having a commonality of interest if either:

(A) The employers are in the same trade, industry, line of business or profession; or

(B) Each employer has a principal place of business in the same region that does not exceed the boundaries of a single State or a metropolitan area (even if the metropolitan area includes more than one State).

(ii) In the case of a group or association that is sponsoring a MEP under this section and that is itself an employer member of the group or association, the group or association will be deemed for purposes of paragraph (b)(2)(i)(A) of this section to be in the same trade, industry, line of business, or profession, as applicable, as the other employer members of the group or association.

(c)(1) *Bona fide professional employer organization.* A professional employer organization (PEO) is a human-resource company that contractually assumes certain employer responsibilities of its client employers. For purposes of title I of the Act and this chapter, a bona fide PEO is capable of establishing a MEP. A bona fide PEO is an organization that meets the following requirements:

(i) The organization performs substantial employment functions, as described in paragraph (c)(2) of this section, on behalf of its client employers, and maintains adequate records relating to such functions;

(ii) The organization has substantial control over the functions and activities of the MEP, as the plan sponsor (within the meaning of section 3(16)(B) of the Act), the plan administrator (within the meaning of section 3(16)(A) of the Act), and a named fiduciary (within the meaning of section 402 of the Act);

(iii) The organization ensures that each client employer that adopts the MEP acts directly as an employer of at least one employee who is a participant covered under the defined contribution MEP; and

(iv) The organization ensures that participation in the MEP is available only to employees and former employees of the organization and client employers, and their beneficiaries.

(2) *Criteria for substantial employment functions.* The criteria in this paragraph (c)(2) are relevant to whether a PEO performs substantial employment functions on behalf of its client employers. Although a single criterion alone may, depending on the facts and circumstances of the particular situation and the particular criterion, be sufficient to satisfy paragraph (c)(1)(i) of this section, as a safe harbor, an organization shall be considered to perform substantial employment

functions on behalf of its client employers if—

(i) The organization is a ''certified professional employer organization'' (CPEO) as defined in section 7705(a) of the Internal Revenue Code, and regulations thereunder, the CPEO has entered into a ''service contract'' within the meaning of section 7705(e)(2) of the Internal Revenue Code with respect to its client-employers that adopt the defined contribution MEP with respect to the client-employer employees participating in the MEP, pursuant to which it satisfies the criteria in paragraphs (c)(2)(ii)(A), (B), and (C) of this section, and the organization meets any two or more of the criteria set forth in paragraph (c)(2)(ii)(D) though (I) of this section; or

(ii) The organization meets any five or more of the following criteria with respect to client-employer employees participating in the plan:

(A) The organization is responsible for payment of wages to employees of its client-employers that adopt the plan without regard to the receipt or adequacy of payment from those client-employers;

(B) The organization is responsible for reporting, withholding, and paying any applicable federal employment taxes for its client employers that adopt the plan, without regard to the receipt or adequacy of payment from those client-employers;

(C) The organization is responsible for recruiting, hiring, and firing workers of its client-employers that adopt the plan in addition to the client-employer's responsibility for recruiting, hiring, and firing workers;

(D) The organization is responsible for establishing employment policies, establishing conditions of employment, and supervising employees of its client-employers that adopt the plan in addition to the client-employer's responsibility to perform these same functions;

(E) The organization is responsible for determining employee compensation, including method and amount, of employees of its client-employers that adopt the plan in addition to the client-employers' responsibility to determine employee compensation;

(F) The organization is responsible for providing workers' compensation coverage in satisfaction of applicable state law to employees of its client-employers that adopt the plan, without regard to the receipt or adequacy of payment from those client-employers;

(G) The organization is responsible for integral human-resource functions of its client-employers that adopt the plan, such as job-description development, background screening, drug testing, employee-handbook preparation, performance review, paid time-off tracking, employee grievances, or exit interviews, in addition to the client employer's responsibility to perform these same functions;

(H) The organization is responsible for regulatory compliance of its client-employers participating in the plan in the areas of workplace discrimination, family-and-medical leave, citizenship or immigration status, workplace safety and health, or Program Electronic Review Management labor certification, in addition to the client-employer's responsibility for regulatory compliance; or

(I) The organization continues to have employee-benefit-plan obligations to MEP participants after the client employer no longer contracts with the organization.

(d) *Dual treatment of working owners as employers and employee*s. (1) A working owner of a trade or business without common law employees may qualify as both an employer and as an employee of the trade or business for purposes of the requirements in paragraph (b) of this section, including the requirement in paragraph (b)(1)(ii) of this section that each employer member of the group or association adopting the MEP must be a person acting directly as an employer of one or more employees who are participants covered under the MEP, and the requirement in paragraph (b)(1)(vi) of this section that the group or association does not make participation through the group or association available other than to certain employees and former employees and their beneficiaries.

(2) The term ''working owner'' as used in this paragraph (d) means any person who a responsible plan fiduciary reasonably determines is an individual:

(i) Who has an ownership right of any nature in a trade or business, whether incorporated or unincorporated, including a partner or other self-employed individual;

(ii) Who is earning wages or self-employment income from the trade or business for providing personal services to the trade or business; and

(iii) Who either:

(A) Works on average at least 20 hours per week or at least 80 hours per month providing personal services to the working owner's trade or business, or

(B) In the case of a MEP described in paragraph (b) of this section, if applicable, has wages or self-employment income from such trade or business that at least equals the working owner's cost of coverage for participation by the working owner and any covered beneficiaries in any group health plan sponsored by the group or association in which the individual is participating or is eligible to participate.

(3) The determination under this paragraph (d) must be made when the working owner first becomes eligible for participation in the defined contribution MEP and continued eligibility must be periodically confirmed pursuant to reasonable monitoring procedures.

Signed at Washington, DC, October 16, 2018.

Preston Rutledge,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

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